Supreme Court, U.S.
FILED

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NO. 05-

IN THE
SUPREME COURT OF THE UNITED STATES

CAPTAIN SHERIFF SAUDI,

Petitioner,

VS.

V. SHIPS SWITZERLAND A/K/A ACOMARIT MARITIMES SERVICES, S.A.

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. WAS THE THIRD CIRCUIT COURT OF APPEALS REQUIRED TO TAKE JUDICIAL NOTICE OF ADJUDICATIVE FACTS AND JUDICIAL PROCEEDINGS, SUBSEQUENT TO THE DISTRICT COURT JUDGMENT UNDER REVIEW, WHICH RENDERED THAT JUDGMENT FRAUDULENTLY OBTAINED?

STATEMENT PURSUANT TO RULE 29.6

Acomarit Maritimes Services, S.A., Respondent, is presently known as V. Ships Switzerland. To Petitioner's knowledge, V. Ships Switzerland is a closely held private corporation and no publicly-held company owns 10% or more of its stock.

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TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT AND TO THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Petitioner, Captain Sheriff Saudi, files this Petition for Writ of Certiorari requesting that this Honorable Court review the Judgment of the United States Court of Appeals for the Third Circuit affirming the decision of the United States District Court for the Eastern District of Pennsylvania, Philadelphia Division.

OPINIONS BELOW

A copy of the Judgment of the United States Court of Appeals for the Third Circuit affirming the Decision of the United States District Court for the Eastern District of Pennsylvania, Philadelphia Division, is attached as Appendix A.

A copy of the Opinion of the United States Court of Appeals For the Third Circuit affirming the decision of the United

States District Court for the Eastern District of Pennsylvania, Philadelphia Division, is attached as Appendix B.

A copy of the Memorandum Decision of the United States District Court for the Eastern District of Pennsylvania is attached as Appendix D.

STATEMENT OF JURISDICTION

This is a civil appeal from a Decision of a United States District Court and a federal Circuit Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. ' 1254(1).

STATUTES INVOLVED

The District Court had jurisdiction over Petitioner's claims under 28 U.S.C. ' 1333. Appeal was properly taken by Petitioner to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. ' 1291 and Rule 4 of the Fed.R.App.Proc.

SUMMARY OF THE CASE

A portside hose crane collapsed on the S/T Marine Atlantic on May 17, 1999 during lightering operations in the Gulf of Mexico. Petitioner, Captain Sheriff Saudi, who was being off-lifted by the crane to a smaller tender vessel as part of lightering operations suffered severe injuries. (Appendix D). Petitioner Saudi filed suit against Respondent, Acomarit Maritimes Services, S.A., in the Pennsylvania State Courts within the three-year statute of limitations. Respondent Acomarit removed Saudi's suit to the United States District Court for the Eastern District of Pennsylvania. (Appendix D). Respondent Acomarit filed a Motion to Dismiss for Lack of Jurisdiction alleging that insufficient "minimum contacts" existed under the long arm statute of the State of Pennsylvania

to require it to defend Saudi's suit. (Appendix D). The District Court granted jurisdictional discovery.

Acomarit refused to answer Petitioner Saudi's discovery and forced Saudi to file a Motion to Compel. (Appendix E). The District Court then ordered Acomarit to answer certain interrogatories and requests for production. (Appendix F). When Saudi complained of the insufficiency of these answers, the District Court directed him to file a Motion to Compel. Acomarit's final response to this court-compelled discovery was that it had no records or information which were called for under the compelled interrogatories and requests. The District Court deemed Acomarit's answers "truthful," refused Saudi any further relief, and entered a Judgment of Dismissal, for lack of jurisdiction, in Acomarit's favor. (Appendices D, E, F, and G). The information which Saudi sought under the compelled

jurisdictional discovery would have revealed evidence of jurisdictional contacts if it existed and if it had been produced.

Before the Pennsylvania case terminated in Acomarit's favor, Saudi filed suit against Acomarit and the owner of the vessel, S/T Marine Atlantic, Marine Atlantic, Ltd., in the United States District Court for the Eastern District of New York, Brooklyn Division. (Appendix I).

The deposition of Acomarit's Chief of Operations, Jacques Louis Bille -- taken after the District Court for the Eastern District of Pennsylvania entered its Memorandum Decision -- revealed that records which were purportedly destroyed still existed and that Acomarit's claim that all pertinent records requested in the Pennsylvania proceeding had been destroyed, was untrue. (Appendix I).

Based on Bille's deposition testimony and judicial admissions

of Acomarit's counsel before District Court for the Eastern District of New York, Petitioner Saudi filed a Motion to Take Judicial Notice Pursuant to Rule 201(f) F.R.E. in the United States Court of Appeals for the Third Circuit before the Third Circuit entered its Judgment and Decision on April 22, 2004. (Appendix I).

The Third Circuit Court of Appeals rendered its Decision April 22, 2004, without acting on Petitioner's Demand to Take Judicial Notice.

Petitioner, Captain Sheriff Saudi, brings this case seeking to enforce his right to judicial notice of subsequent facts and judicial proceedings which reveal that a judgment under review in a federal Court of Appeals is fraudulently based.

This case presents an important issue of whether Rule 201, F.R.E. means what it says when it states that judicial notice is

"mandatory" and binding on the Court of Appeals irrespective of whether or not the judicial proceedings, and facts to be noticed, occurred subsequent to the judgment fraudulently obtained.

STATEMENT OF THE CASE

1. THE THIRD CIRCUIT WAS REQUIRED TO TAKE JUDICIAL NOTICE OF FACTS IN JUDICIAL PROCEEDINGS SUBSEQUENT TO THE DISTRICT COURT JUDGMENT UNDER REVIEW WHICH RENDERED THAT JUDGMENT FRAUDULENTLY OBTAINED.

The District Court found that Respondent Acomarit had insufficient minimum contacts with the State of Pennsylvania to allow the Pennsylvania District Court to exercise personal jurisdiction. The Judgment and Opinion of the Court of

Appeals affirmed this finding. Both holdings were based on the claim Saudi "had failed to prove" that Acomarit's discovery responses pertaining to its jurisdictional contacts were truthful. After timely appeal Petitioner Saudi filed a Motion to Take Judicial Notice in the Court of Appeals which contained proof of subsequent adjudicative facts and admissions in judicial proceedings, and which proved that Acomarit had withheld information required by Court-compelled discovery and/or had destroyed records relevant to its minimum contacts with the State of Pennsylvania and the United States after Acomarit was aware that it had been sued by Petitioner. (Appendix I).

Federal Rule of Evidence 201(f) governs the taking of judicial notice on appeal. It states in pertinent part:

(f) Time of Taking Notice. Judicial Notice may be taken at any stage of the proceeding.

Rule 201(b), F.R.E. states that the taking of judicial notice is "mandatory" if judicial notice is:

Requested by a party (and the Court is) supplied with the necessary information.

Despite the clear wording of the rule, a controversy seems to exist as to whether or not a Court of Appeals is required to take judicial notice of subsequent judicial proceedings and adjudicative facts which prove that the judgment under review was wrongfully or fraudulently obtained.

Is judicial notice an avenue of relief for wrongfully and fraudulently obtained judgments in addition to that allowed by Rule 60(b) F.R.Civ.P.? Do Courts of Appeal have the "discretion" to grant or withhold relief at their whim? Must a Court of Appeals or any other Federal Court including this Supreme Court, act on a Request for Judicial Notice whether it

is granted or denied? Last of all, did the Federal Courts retain any discretion to deny judicial notice when it is mandatory under Rule 201(d), F.R.E.?

This case presents all of the above questions. Can parties such as Acomarit be allowed to make a string of inconsistent and untruthful discovery responses in the hopes that a Petitioner such as Saudi will run out of federal ports of call (District Courts) where jurisdiction can be alleged and proven before the truth surfaces?

Where proof of jurisdiction concerning torts on the high seas affecting U.S. trade or maritime commerce is exceedingly difficult to obtain the necessity for truthful responses in jurisdictional discovery from prospective (and allegedly) foreign Defendants is paramount. Neither a Federal District Court nor Federal Court of Appeals should be held to have the discretion or power to ignore proof of subsequent adjudicative facts or judicial proceedings which reveal that a judgment of dismissal

was wrongfully or fraudulently obtained.

This Court has not yet addressed this issue. It has, however, dealt with judicial notice taken by Courts of Appeals of subsequent facts and proceedings. In Hope v. Pelzer, 536 U.S. 730 (2002), this Court noted that the Court of Appeals had taken judicial notice of a Department of Justice Report:

Not before the District Court in (the) case,...The Court of Appeals took judicial notice of the report and referenced it throughout the decision below....

See Hope at P. 748, fn. 7.

In United States Postal Service v. Gregory, 534 U.S. 1 (2001), this Court noted that the Court of Appeals had:

Taken judicial notice of the fact that one of the three disciplinary actions underlying Respondent's

termination had been overturned in arbitration, and noting that Respondent's two remaining grievances were still pending....

United States Postal Service at P. 6.

In California v. Deep Sea earch, Inc., 523 U.S. 491 (1998), this Court noted that the Court of Appeals had:

Declined to take judicial notice of evidence that, during pendency of the appeal, the Brother J was determined eligible for inclusion in the National Register.

Deep Sea Research, Inc. at P. 600.

Finally, in Inwood Laboratories v. Ives Laboratories, 456 U.S. 844 (1982), this Court noted that the Court of Appeals had taken judicial notice of:

Six indictments (which) were handed down in New York City charging pharmacists with substituting Cycladelate for Cyclospasmol.

Inwood Laboratories at P. 859, fn 19.

This Court, in Inwood, criticized the Court of Appeals for failing to remand the judicially-noticed facts to the District Court with the instruction to take them into account in rendering a new judgment.

The Courts of Appeal have not been uniform in their application of judicial notice to subsequent adjudicative facts, or judicial proceedings which were not available to the District Court at the time judgment or opinion was rendered. The Third Circuit appears to take a discretionary approach under which the Court of Appeals can feel free to take or refuse to take judicial notice "...to prevent injustice and fraud...." In Re: Indian Palms Associates, Ltd., 61 F.3d 197, 205-6 (3rd Cir.

1995). See also Barr Rubber Products Co. v. Sun Rubber Co., 425 F.2d 1114 (2nd Cir. 1970); Zell v. Jacoby-Bender, 542 F.2d 34 (7th Cir. 1976), and International Bros. of Teamsters, Chauffeurs, Ware housemen, and Helpers of America v. Zantop Air Transport Corp., 394 F.2d 36, 40 (6th Cir. 1968).

The taking of judicial notice can be an important instrument to remedy, and thereby prevent, fraudulently obtained judgments in the Federal Courts or those obtained on wrongful grounds. What is needed is a clearly delineated rule which follows the dictates of Rule 201 F.R.E. and requires the Federal Courts to take judicial notice of subsequent adjudicative facts and legal proceedings which prove fraud or some other grounds on which a judgment was wrongfully obtained which entitles the Petitioner or victim to relief.

Indeed, it can be argued that the proper invocation of judicial notice is a legal remedy and that the failure of exhaustion of such remedy, where it is available on appeal, prohibits a

subsequent action for equitable relief under Rule 60(b) F.R.Civ.P. or on other equitable grounds.

The judgment and opinion of the Third Circuit Court of Appeals should be reversed and judgment here rendered by this Court that personal jurisdiction over Respondent Acomarit is established by the record of this case including the subsequent adjudicative facts and legal proceedings which the Court of Appeals refused to notice.

In the alternative, this case should be reversed and this cause remanded to the Court of Appeals or the District Court with instructions to take the adjudicative facts and subsequent proceedings into account based on this Court's instructions and to render a new judgment and opinion.

REASONS FOR GRANTING THE PETITION

1. The Federal Court of Appeals is required to act on a Request to Take Judicial Notice.

2. The Federal Court of Appeals must take judicial notice of subsequent facts and proceedings which render the judgment fraudulent or wrongfully obtained.

CONCLUSION

For the reasons stated herein, the Petition for Writ of Certiorari should be granted. The Judgment and Opinion of the United States Court of Appeals for the Third Circuit should be reversed and this cause remanded with instructions that personal jurisdiction exists over Respondent Acomarit. In the alternative, the opinion of the United States Court of Appeals for the Third Circuit should be reversed and this cause

remanded to the Court of Appeals or the District Court with instructions that a new judgment on the issue of jurisdiction be issued after the taking of judicial notice of the subsequent adjudicative facts and legal proceedings presented in Petitioner's Motion to Take Judicial Notice in the Court of Appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joe Alfred Izen, Jr., certify that on the 16th day of December, 2004 one true and correct copy of the foregoing Petition for Writ of Certiorari was mailed to the following persons and addressed to

Solicitor General
950 Pennsylvania Avenue, NW
Room 5614
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(202) 514-22178

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One South Penn Square
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by depositing same enclosed in a post-paid, properly addressed wrapper, in an official depository maintained by the United States Postal Service and that on the same date as above, I sent to this Court the same Petition for Writ of Certiorari through the United States Postal Service, postage prepaid.

All parties required to be served have been served.

_____
Joe Alfred Izen, Jr.

APPENDIX

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 03-1609

SHERIFF SAUDI, CAPTAIN,
Appellant

V.

ACOMARIT MARITIMES SERVICES, S.A.

On Appeal from the United States District Court
for the Eastern District of Pennsylvanla
D.C. Civil Action No, 01-cv-04301
(Honorable Michael M. Baylson)

Argued April 22, 2004

Before: SCIRICA. *Chief Judge,* ROSENN and
GREENBERG, *Circuit Judges*

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel on April 22, 2004. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the order of the District Court entered February 3, 2003, be, and the same is hereby affirmed. Costs taxed against appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

Clerk

DATED: 17 September 2004

Certified as a true copy and issued in lieu of a formal mandate on October 12, 2004.

Teste:

Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

Appendix B

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 03-1609

SHERIFF SAUDI, CAPTAIN,
Appellant

V.

ACOMARIT MARITIMES SERVICES, S.A.

On Appeal from the United States District Court
for the Eastern District of Pennsylvanla
D.C. Civil Action No, 01-cv-04301
(Honorable Michael M. Baylson)

Argued April 22, 2004

Before: SCIRICA. *Chief Judge,* ROSENN and GREENBERG, *Circuit Judges*

(Filed. September 17, 2004)

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OPINION OF THE COURT

SCIRICA, *Chief Judge.*

In this personal injury suit, petitioner appeals a Fed.R. Civ. P. 12(b)(6) dismissal by the District Court for lack of specific and general personal jurisdiction. We will affirm.

I.

Plaintiff Sheriff Saudi was employed as a "mooring master" by American Eagle Tankers, a global maritime services company. As a mooring master, Saudi was assigned by his employer to moor supertankers or vessel on the high seas for the purpose of on-loading and off-loading petroleum and other cargo. Supertankers are often unable to enter American ports in the continental United States because the vessels' drafts exceed the depth of domestic ports.

Defendant Acomarit Maritimes Services, S.A. is an international ship management company. Acomarit is a Swiss company with headquarters in Bermuda. It neither engaged in business in Pennsylvania nor registered to do business in Pennsylvania. It does not maintain offices in Pennsylvania or an agent for service of process. It manages vessels, including supertankers, handling the vessels' crewing and provisioning, and ensuring that it arrives at its intended destination. Acomarit managed the Marine Atlantic, the supertanker involved in plaintiff's accident.

On May 17, 1999, Saudi left a vessel managed and operated by his employer, disembarked on to a tender vessel, and was placed aboard the Marine Atlantic supertanker. At the time, the Marine Atlantic was at anchor sixty miles southeast of Galveston, Texas, in international waters. The crane transferring Saudi to the tender vessel collapsed, causing him to fall fifty feet into the Gulf of Mexico, Saudi

alleges he was lashed by the wire support cable of the crane and suffered extensive injuries including a broken arm, nerve damage, broken ribs, injured lungs, as well as lost wages and income.

II.

Saudi filed an admiralty and maritime action in the United States District Court for the Southern District of Texas against the owner of the Marine Atlantic, the manufacturer and servicer of the allegedly defective crane, the owner of the crude oil being stored on the Marine Atlantic, and Acornarit. *Saudi v. Marine Atlantic, 159* F. Supp. 2d *469* (S.D. Tex. 2000). He alleged claims of negligence, unseaworthy vessel, breach of warranty of merchantability, and strict liability in tort. *Id.* at 472. On February 1,2000, the federal court in Texas granted without prejudice Acomarit's motion to dismiss for lack of personal jurisdiction. The court held Saudi failed to demonstrate sufficient minimum contacts to Texas or to the United States to establish specific or general personal jurisdiction in Texas or general jurisdiction under Fed. R. Civ. P. 4(k)(2). *Id.* at 483.[1]

On May 16, 2001, Saudi filed a complaint in Pennsylvania state court, seeking actual and punitive

---

1. Saudi has also filed actions in connection with his accident against various defendants in at least five federal jurisdictions, as well as in Texas and Wisconsin state courts. *See Saudi v. Northrop Grumman Corp.,* 273 K Supp. 2d 101 (D.D.C. 2003) (products liability action); *Saudi v. S/T Marine Atlantic,* 2001 U.S. Dist, LEXIS *15155,* 2001 WL 893871 (S.D. Tex, Feb. 20, 2001) (maritime negligence action); *Saudi* v. *Valmet-Appleton, Inc.,* 219 F.R.D. 128 (E.D. Wis. 2003) (products liability action); *Saudi v. V Ship Switzerland,* S..A., 2004 U.s. App. LEXIS *5923* (Mar. 31, 2004). The record indicates he has not been able to establish personal jurisdiction in any of the federal courts against Acomarit.

damages against Acomarit for negligently failing to properly inspect and maintain the Marine Atlantic's crane, as well as negligently failing to make the Marine Atlantic safe for performing the operations for which he was hired. Saudi alleged jurisdiction was proper in Pennsylvania because Acomarit "employed" Thomas Garrett, a resident of Nazareth, Pennsylvania, who earned Out Acomarit's business partly from Pennsylvania. Acomarit timely removed to federal court under 28 U.S.C. § 1332 and 28 U.S.C. § 1331, as the case involved admiralty and maritime jurisdiction under 28 U.S.C. § 1333.

Acomarit filed a motion to dismiss for lack of personal jurisdiction, which was denied with leave to refile by July 30, 2002. After a limited period of discovery, Acomarit filed a renewed motion to dismiss for lack of personal jurisdiction, which the District Court granted on January31, 2003. 245 F. Supp.. 2d at 667. The court found it lacked general jurisdiction because Acomarit's contacts with Pennsylvania were sporadic at best, rather than continuous and systematic, *id. at 669, 675;* and that it lacked specific jurisdiction because Saudi did not allege that Acomarit purposefully directed its activities at the forum. *The* court found the Southern District of Texas's ruling on Fed. R. Civ. P.4(k)(2)jurisdiction did not amount to claim preclusion, since a final adjudication on the merits (one of the requirements for claim preclusion) cannot result from a dismissal without prejudice for lack of personal jurisdiction. But the court rejected Rule 4(k)(2) jurisdiction on its merits, holding there was no nexus to the United States since the accident took place outside the territorial waters of the United States and had no effect inside the Untied States. *Id.* at 679-80. The court also rejected Saudi's motion to compel discovery, finding that Acomarit properly complied with Saudi's discovery requests. *Id.* at 681.

Saudi filed this timely appeal.

III.

We review *de novo* the District Court's dismissal of a party for lack of personal jurisdiction, *Pinker v. Roche Holdings, Ltd,* 292 F.3d 361, 368 (3d Cir. 2002), but we review factual findings for clear error. *Pennzoil Products Co. v. Colelli & Assoc., Inc.,* 149 F.34 197, 200 (3d Cir. 1998). We review for abuse of discretion the District Court's discovery rulings, *Ins. Corp. of Ir. v. Companie Des Bauxites De Guinee,* 456 U.S. 694, 707(1982). We have appellate jurisdiction under 28 U.S.C. §1291.

IV.

A. Personal Jurisdiction in Pennsylvania

Saudi claims that the District Court erred in dismissing his suit for lack of personal jurisdiction. Fed. R. Civ. P. 4(e) allows a district court to assert personal jurisdiction over *a* non-resident to the extent allowed by the law of the forum state. *Time Share Vacation Club v. Atlantic Resorts, Ltd.,* 735 F.2d 61, 63 (3d Cir. 1984). Pennsylvania's long-arm statute provides that a court may exercise personal jurisdiction over non-residents "to thc fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann, § 5322(b).

The Due Process Clause of the Fourteenth Amendment guarantees *inpersonam* jurisdiction may only be asserted over a nonresident defendant corporation if that defendant has "certain minimum contacts with [the forum) such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice."

International Shoe Co. v. Washington, 326 U.S. 310, 316(1945) (quotation omitted). In assessing personal

jurisdiction, the court must resolve the question based on the circumstances that the particular case presents. *Burger King v. Rudzewicz,* 471 U.S. 462, 485 (1985).

A court may exercise personal jurisdiction over a defendant if the defendant has specific or general contacts with the forum. Specific jurisdiction is appropriate only if the cause of action is related to or arises out of the defendant's forum-related activities, so that it should reasonably expect to be haled into court. *Vetrotex Certainteed Corp. v. ConsoL Fiber Glass Prod. Co., 75* F.3d 147, 151 (3d Cir. 1996); *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408,414 n.8. The defendant must have "purposefully directed his activities at residents of the forum" and the litigation must have resulted from alleged injuries that "arise out of or related to those activities." *BP Chem. Ltd. v.Formosa Chem. & Fibre Corp.,* 229 F.3d *254, 259* (3d Cir. 2000) (quoting *Burger King.*471 U.S. at 472). This determination is both claim-specific and defendant-specific. *See Remick v. Manfredy,* 238 F.3d *248, 255-56* (3d Cit. 2001); *Rusk v. Savchuk,* 444 U.S. 320, 332 (1980).

If the cause of action does not "arise out of" the defendant foreign corporation's activities, a court may assert general jurisdiction if the corporation has "continuous and systematic" contacts with the forum state. 466 U.S. at 414-15. The standard for evaluating whether minimum contacts satisfy the test for general jurisdiction is more stringent than the test applied to questions of specific jurisdiction. *See Noonan* v. *Winston* Co., 135 F.3d 85, 93 (1st Cir. 1998).

1. Specific Jurisdiction

The District Court found no basis to exercise specific personal jurisdiction over Acomarit, as Saudi presented no evidence demonstrating the underlying accident arose out of or related to Acomarit's contacts with or activities in

Pennsylvania, such that Acomarit "should reasonably expect being haled into court" in Pennsylvania. 245 F. Supp. 2d at *669* (quoting *Vetrotex,* 75 F.3d at 151). Saudi's claims against Acomarit relate only to an accident which occurred in thc Gulf of Mexico, not in Pennsylvania or its territorial waters, and Saudi's alleged injury did not arise from any activities Acomarit purposefully directed" at Pennsylvania. *Id.* We find no error.

2. General Jurisdiction

Saudi contends Acomarit had sufficient continuous and substantial contacts with Pennsylvania to establish general jurisdiction over Acomarit through its alleged employee Thomas Garrett. He claims that Osprey-Acomarit Ship Management employee Thomas Garrett was actually a "hidden" employee of Acomarit. According to Saudi, Acomarit hired Garrett as its port captain and entered into a joint venture with American Automar to form a company called Osprey-Acomarit Ship Management ("Osprey-Acomarit"), placed Garrett on that company's payroll, and hid the fact that Acomarit used a resident agent in the United States to carry out its business.

Even if Garrett was employed by Acomarit, Saudi has not shown sufficient contacts with Pennsylvania through Garrett's employment to warrant general jurisdiction over Acomarit. At most, Garrett traveled to and from Pennsylvania to Osprey-Acomarit's office in Maryland. where he had an office, sent some reports from his home in Pennsylvania, and made some telephone calls and some e-mails to and from Pennsylvania. There is no evidence that Acomarit conducted or solicited any business in Pennsylvania. With the exception of one vessel that paid a port call after the Saudi accident, no Acomarit-managed vessels entered Pennsylvania waters. As such, these actions in Pennsylvania are not sufficient to establish "continuous

and systematic" contacts with Pennsylvania. *See, e.g., BP Chem. Ltd.*. 229 F.3d at 262 (finding lack *of* continuous and systematic contacts where the defendant corporation has no personnel or facilities in the forum and has not advertised or solicited business in the forum); *Nichols v. Searle & Co.*, 991 F.2d 1195, 1200(4th Cir. 1993) (finding insufficient "continuous and substantial activities" to justify general jurisdiction despite defendant's solicitation activities and employment of representatives in the forum state). The District Court did not abuse its discretion in finding lack of general personal jurisdiction over Acomarit in Pennsylvania.

B. Fed. R. Civ. P 4(k)(2)

1. Claim Preclusion and Issue Preclusion as Applied to the Rule 4(k)(2) Claim

The federal court in Texas dismissed Saudi's case without prejudice for lack of personal jurisdiction. Acomarit contends Saudi already litigated whether jurisdiction lies under Fed. R. Civ. p. 4(k)(2), so he should have been estopped from litigating the Rule 4(k)(2)claim before the District Court here. *See Saudi* v. *S/T Marine Atlantic,* 159 F. Supp. 2d 469, 479-83 (S.D. Tex. 2000). Two types of estoppel might be applicable: res judicata (claim preclusion) and collateral estoppel (issue preclusion).

Claim preclusion does not apply here. Three elements are required for claim preclusion to take effect (1) a final judgment on the merits must have been rendered in a prior suit; (2) the same parties or their pnvies are involved; and (3) the subsequent suit is based on the same cause of action as the original. *Lubi-n&* Coip. *v. &xon Corp.* 929 F.2d 960, 963 (3d Cir'. 1991). The first prong has not been satisfied here. The federal court in Texas dismissed Saudi's suit for lack of personal jurisdiction, rather than issuing a judgment "on the merits." *See* Fed. R. Civ. P. 41(b);

Compagnie des Bauxites de Guinee v. L 'Union Atlantique LA. d'Assurances, 723 F.2d 357, 360 (3d Cit 1983).

Furthermore, dismissals without prejudice are not considered to be "final judgments" as required for claim preclusion to take effect *Trevino-Barton v. Pittsburgh Nat'l Bank;* 919 F.2d 874, 877-78 (3d Cir. 1990). As the District Court correctly concluded, claim preclusion does not bar Saudi from bringing the current Rule 4(k)(2) action.

It is possible that issue preclusion, might bar Saudi's Rule 4(k)(2) action.[2] Issue preclusion may apply to non-merits judgments which are conclusive as to those matters actually adjudged. See *Matosantos Commercial Corp. v. Applebee's Int'l, Inc.,* 245 F.3d 1203, 1209 (l0th Cir. 2001) ("Although the dismissal for lack of personal jurisdiction in the Puerto Rico district court does not have res judicata effect, it does have collateral estoppel effect, preventing the relitigation of issues decided in the Puerto Rico district court"); *Oko.ro v. B~hman,* 164 F.3d *1059,* 1063 (7th Cir. 1999). To establish issue preclusion. Acomarit must demonstrate: "(1) the issue sought to be precluded is the sainc as that involved in the prior action; (2) that issue was actually litigated; (3) it was determined by a final and valid judgment; and (4) the determination was essential to the

[2]While counsel for Acomarit mainly focused its arguments on claim preclusion, their arguments appear to encompass issue preclusion as well. Counsel wrote In two separate briefs, "the Court correctly noted that the *issue* of Rule 4(k)(2) jurisdiction was 'previously resolved in the Texas litigation," App. 496, and "[the *issue* of Fed. R. Civ.' P. 4(k)(2) jurisdiction has already been decided by the United States District Court for the Southern District of Texas and serves as res judicata to bar the re-litigation of that claim in this case" (emphasis added, further more, counsel for Acomarit supported its contentions by citing to *Montana v. Supreme Court of the United States,* 440 U.S. 147, 153-55 (1979), a case addressing issue preclusion.

priorjudgment."*Burlington N. R.R. v. Hyundai Merchant Marine Co.,* 63 F.3d 1227, 1232 (3d Cir. *1995)* (quoting *In reBraen,* 900 K2d 621, 628-29 *n.5* (3d Cir. 1990), *cert. denied,* 498 U.S. 10(~6 (1991)). It appears all four elements may have been met here. The Southern District of Texas decided the same Rule 4(k)(2) issue that Saudi now mises, namely whether Acomarit was subject to personal jurisdiction based upon nationwide contacts. *See Saudi,* 159 F,Supp2d at 479-83, *and Saudi,* 245 F.Supp.2d at 676-681. This issue was litigated in the Texas action, the Texas court issued a valid judgment regarding Rule 4(k)(2) jurisdiction, and the issue of Rule 4(k)(2) jurisdiction was essential to the Texas judgment in determining whether there was personal jurisdiction over Acomarit. *See* 159 F.Supp.2d at 479-83. Nonetheless, the able District Court did not specifically address issue preclusion and so we are reluctant to rule on it here, especially since we believe plaintiff cannot prevail on the merits.

2. Rule 4(k)(2) Discussion on the Merits

Even if Saudi were permitted to bring a claim of personal jurisdiction under Fed.R. Civ. P. 4(k)(2), his claim would fail. Rule 4(k)(2) allows a federal court to exert jurisdiction over a foreign defendant *where* the defendant lacks sufficient contacts in a single state to bring it within the reach *of* the state's long arm statute, yet has enough contacts with the United States as a whole to make jurisdiction constitutional. Thomas A. Coync, *Federal Rules of Civil Procedure* 11-25 (2d ed. 2002). The rule, enacted in December 1993, provides:

> If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a

> summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

Therefore, to establish personal jurisdiction, there must be: (1) a claim arising under federal law; (2) the defendant must be beyond the jurisdictional reach of any state court of general jurisdiction; and (3) the defendant must have sufficient contacts with the United States so that the court's exercise of personal jurisdiction over the defendant comports with the due process requirements of the Constitution or other federal law. *See BP Chem. Ltd.*, 229 F.3d at 262; *United States v. Swiss American Bank, Ltd.*, 191 F.3d 30,38(1Cir.1999). The third prong of the test under Rule 4(k)(2)—minimum contacts—is similar to that of personal jurisdiction for a particular state: "general jurisdiction is available when the defendant's contacts unrelated to the litigation are 'continuous and systematic." *BP Chemicals*, 229 F.3d at 262 (citing *Helicopteros, 466* U.S. at 416[3].

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[3]In *Leasco* 468 F.2d 1326, a case decided before Rule 4(k)(2) was promulgated, the Court of Appeals for the Second Circuit stated:
[T}he Restatement (Second) of Conflict of Laws, § 27, lists various bases for the exercise of judicial jurisdiction over an individual who is not present. Those relevant here are doing business in the state, § 35; doing an act in the state, § 36; and causing an effect in the state by an act done elsewhere, § 37.
468 R2d at 1340. The Second Circuit chose three of the many factors under the Restatement which apply to the facts of that particular case.

See also, e.g., United States v. *Swiss American Bank, Ltd.*, 191 F.3d 30(1st Cir. 1999) (performing a Rule 4(kX2) minimum contacts test but not limiting its analysis to the three factors described above); *Chewy. Dietrich*, 143 F.3d 24 (2d Cir. 1998) (same); *World Tankers Carriers Corp.*, 99 F.3d 717(5th Cir. 1996) (same); *Central States v. Reimer Express World Corp*,[3](Continue.)

Saudi claims he presented sufficient contacts with the United States, described by the Texas court as a "laundry list" but not elaborated on, *see* 159 F, Supp. 2d at 483, to ensure due process has been satisfied. He also argues his injury necessarily has an effect within the United States.

We do not believe that the "minimum contacts" presented by Saudi are sufficient to establish personal jurisdiction over Acomarit. As the District Court noted, Saudi presented even fewer contacts with the United States than the moving party in *BP Chemicals Ltd.*, 227 F.3d *254.* In *HF Chemicals,* we found that a foreign defendant did not have sufficient contacts with the United States as a whole to justify the exercise of Rule 4(k)(2) jurisdiction. *td.* at 258. Although the defendant Taiwanese corporation exported its products to the United States, held an ownership interest in a Delaware corporation, and exilered into contacts requiring its personnel to travel to the United States for training, we held the cumulative effects of these contacts did not meet the requirements for general personal jurisdiction under Rule 4(k)(2), *Id.* at 258-59. In this case, there appear to be fewer jurisdictional connections than in *BP Chemicals.* Saudi's accident occurred outside the United States, and Saudi presents no evidence that Acomarit solicited or transacted business in the United States. The District Court did not err in finding lack of sufficient contacts with the United States.

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[3] (...continued)
230 F.3d 934,946(7th Cir 2000) (ERISA case); *Doe v. Unocal Corp.,* 27 F. Sup. 2d 1174 (CD. Ca. 1998); aff'd, 248 F.3d 915(9th Cir. 2001); *SEC v. Knowles,* 87 F.3d 413, 416-19 (10th Cir. 1996) (involving a contract dispute); *Associated Transp. Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, S.A.,* 197 F.3d 1070, 1074-76(11th Cir. *1999)* (tort case involving communication of misinformation).

C. Motion to Compel Discovery and Impose Sanctions

Finally, Saudi alleges Acomarit abused the discovery process and blockod discovery of jurisdictional facts. He alleges Acomarit committed unauthorized redactions, submitted meritless objections to requests for telephone bills and financial records showing reimbursments in Pennsylvania, and made unsupported claims that documents were destroyed and cannot be produced. Saudi claims that he is entitled to a finding of personal jurisdiction based on this alleged willful obstruction of discovery. The District Court found no abuse of discovery. It noted, "Despite [Saudi's] insistence that Acomarit has not produced documents in its possession, Saudi has not produced any evidence to prove that Acomarit is withholding documents." *Saudi,* 245 F. Supp. At 681. We see no abuse of discretion.

V.

For the reasons stated above, we will affirm the judgment of the District Court.

Appendix C

U.S. District Court

U.S. District Court of Eastern Pennsylvania (Philadelphia)

CIVIL DOCKET FOR CASE #: 01-CV-4301

SAUDI v. ACOMARIT MARITIMES

Filed: 08/23/01

Assigned to: JUDGE MICHAEL M. BAYLSON

Demand: $11,000<000

Nature of Suit: 340

Lead Docket: None

Jurisdiction: Diversity

DKT # in other court: None

Cause: 28:1332 Diversity-Product Liability

SHERIFF SAUDI, CAPTAIN PLANTIFF,	SHERIFF SAUDI, CAPTAIN (COR LD NTC) [PRO SE 5222 SPRUCE STREET BELLAIRE, TX 77401.USA
v.	
ACOMARIT MARITIMES SERVICES, S.A. DEFENDANT	CARL D. BUCHHOLZ, III FAX 215-563-2583 [COR. LD NTC) RAWLE & HENDERSON ONE SOUTH PENN SQUARE THE WIDENER BLDG. 16th FL. PHILA, PA 19107-3519 TEL 215-575-4200—USA
	THOMAS R NORK (COR LD NTC) BELL RYNIKER LETOUR-NEAU & NORK 5847 SAN FELIPE STE. 4600 HOUSTON, TX 77057- USA
	KEITH B. LETOURNEAU (COR LD NTC) BELL RYNIKER LETOUR-NEAU 5847 SAN FELIPE

Date Filed	#	Docket Text
08/23/2001	1	Notice of removal by DEFENDANT ACOMARIT MARITIMES from the Court of Common Pleas of County: Philadelphia , May 2001 term # 001475, filing fee $ 150 receipt # 769999 (mic) (Entered: 08/23/2001)
08/23/2001		Standard Case Management Track. (mic) (Entered: 08/23/2001)
08/24/2001	2	MOTION by DEFENDANT ACOMARIT MARITIMES TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION , MEMORANDUM, CERTIFICATE OF SERVICE. (ph) (Entered: 08/27/2001)
09/10/2001	3	Response and answer by PLAINTIFF SHERIFF SAUDI to MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION and request for enlargement of time to further respond , Certificate of Service. (ph) (Entered: 09/12/2001)
09/10/2001	4	MOTION by PLAINTIFF SHERIFF SAUDI TO REMAND with , MEMORANDUM of law in support,

		CERTIFICATE OF SERVICE. (ph) (Entered: 09/12/2001)
09/12/2001	5	MOTION by DEFENDANT ACOMARIT MARITIMES FOR THOMAS R. NORK, ESQ. AND KEITH B. LETOURNEAU TO APPEAR PRO HAC VICE , CERTIFICATE OF SERVICE. (ph) (Entered: 09/13/2001)
09/18/2001	6	ORDER GRANTING MOTION FOR THOMAS R. NORK, ESQ. AND KEITH B. LETOURNEAU TO APPEAR PRO HAC VICE (Attorney: THOMAS R. NORK) (SIGNED BY JUDGE JAMES M. KELLY) 9/18/01 ENTERED AND COPIES MAILED (ph) (Entered: 09/18/2001)
09/20/2001	7	Response by DEFENDANT ACOMARIT MARITIMES to Plaintiff's MOTION TO REMAND, MEMORANDUM, Certificate of Service. (afm) (Entered: 09/21/2001)
09/20/2001	8	Reply by DEFENDANT ACOMARIT MARITIMES to plaintiff's response to motion to dismiss and opposition to motion for enlargement of time, Certificate of service (ph) (Entered: 09/21/2001)
10/18/2001	9	Reply by PLAINTIFF SHERIFF SAUDI to response to MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL

		JURISDICTION and MOTION FOR ENLARGEMENT OF TIME WITH MEMORANDUM OF LAW, Certificate of service (ph) (Entered: 10/18/2001)
10/18/2001	10	Affidavit by PLAINTIFF SHERIFF SAUDI in opposition to MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION and in opposition to SAUDI'S motion to enlarge time within which to take jurisdictional discovery (ph) (Entered: 10/18/2001)
10/25/2001	11	Original record together with certified copy of docket entries received from the Court of Common Pleas of Phila County. (010501475) (ph) (Entered: 10/26/2001)
10/30/2001	12	Sur Reply by DEFENDANT ACOMARIT MARITIMES to plaintiff's reply to motion to dismiss, and sur reply to plaintiff's reply to opposition to plaintiff's motion for enlargement of time, and motion to remand, Certificate of service (ph) (Entered: 10/31/2001)
02/04/2002	13	Praecipe by PLAINTIFF SHERIFF SAUDI for alias summons. (ph) (Entered: 02/07/2002)
02/04/2002		Alias Summons(es) issued Forwarded to: S. Saudi 2/7/02 (ph) (Entered: 02/07/2002)

02/13/2002	14	MEMORANDUM AND ORDER THAT MOTION TO REMAND IS DENIED, THE MOTION TO DISMISS FOR IMPROPER SERVICE OF PROCESS AND LACK OF PERSONAL JURISDICTION IS DENIED WITHOUT PREJUDICE, ACOMARIT MARITIMES SERVICES, S.A.D. MAY THEN REFILE ITS MOTION TO DISMISS ON OR BEFORE 7/30/02. (SIGNED BY JUDGE JAMES M. KELLY) 2/14/02 ENTERED AND COPIES MAILED AND FAXED. (afm) (Entered: 02/14/2002)
02/14/2002	15	MOTION by PLAINTIFF SHERIFF SAUDI TO COMPEL ANSWERS TO PLFF'S FIRST SET OF ADMISSIONS, FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND PLFF'S FIRST SET OF INTERROGATORIES , MEMORANDUM, CERTIFICATE OF SERVICE. (md) (Entered: 02/14/2002)
02/27/2002	16	Memorandum by DEFENDANT ACOMARIT MARITIMES in opposition to MOTION TO COMPEL ANSWERS TO PLFF'S FIRST SET OF ADMISSIONS, FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND PLFF'S FIRST SET OF INTERROGATORIES , Certificate

		of Service. (ph) (Entered: 02/28/2002)
03/05/2002	17	ORDER REFERRING MOTION: MOTION TO COMPEL ANSWERS TO PLFF'S FIRST SET OF ADMISSIONS, FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND PLFF'S FIRST SET OF INTERROGATORIES AND DEFENDANT'S RESPONSE THERETO REFERRED TO MAGISTRATE JUDGE THOMAS J. RUETER (SIGNED BY JUDGE JAMES M. KELLY) 3/5/02 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS. (ph) (Entered: 03/05/2002)
03/12/2002	18	ORDER GRANTING IN PART, DENYING IN PART PLAINTIFF'S MOTION TO COMPEL ANSWERS TO PLFF'S FIRST SET OF ADMISSIONS, FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND PLFF'S FIRST SET OF INTERROGATORIES; ALL ANSWERS OR RESPONSES REQUIRED BY THIS ORDER, SHALL BE PRODUCED BY DEFENDANT TO PLAINTIFF ON OR BEFORE 4/15/02; IN ALL OTHER RESPECTS, THE MOTION TO COMPEL IS DENIED (SIGNED BY MAGISTRATE JUDGE THOMAS J. RUETER) 3/13/02 ENTERED AND COPIES MAILED

		AND FAXED. (ph) (Entered: 03/13/2002)
03/12/2002		Case no longer referred to (ph) (Entered: 06/25/2002)
03/27/2002	19	Exceptions and Objections by PLAINTIFF SHERIFF SAUDI TO Magistrate's proposed order entered on this court's docket 3/13/02 pursuant to Rule 72(a) of the FRCP, Certificate of Service. (ph) (Entered: 03/27/2002)
03/27/2002	20	Affidavit by PLAINTIFF SHERIFF SAUDI Re: in support of objection and exceptions to Magistrate's order entered on this court's docket 3/13/02 and authenticating certain documents and evidence (ph) (Entered: 03/27/2002)
03/27/2002	21	Memorandum by PLAINTIFF SHERIFF SAUDI in support of exceptions and objections to Magistrate's proposed order entered on the docket 3/13/02 , Certificate of Service. (ph) (Entered: 03/27/2002)
04/12/2002	22	Answer to Complaint by DEFENDANT ACOMARIT MARITIMES , Certificate of Service. (ph) (Entered: 04/15/2002)
04/12/2002		ISSUE JOINED. (ph) (Entered: 04/15/2002)
04/18/2002	23	Response by DEFENDANT ACOMARIT MARITIMES to plaintiff's exceptions and objections

		to Magistrate's order of 3/13/02, Certificate of Service. (ph) (Entered: 04/19/2002)
05/13/2002	24	Response by PLAINTIFF SHERIFF SAUDI to defendant's response to plaintiff's objections and exceptions to Magistrate's Report concerning discovery, Certificate of Service. (ph) (Entered: 05/14/2002)
05/30/2002	25	Sur reply by DEFENDANT ACOMARIT MARITIMES to plaintiff's reply to defendant's response to plaintiff's exceptions and objections to Magistrate's discovery order of 3/13/02, Certificate of service (ph) (Entered: 05/31/2002)
06/24/2002	26	MEMORANDUM AND ORDER THAT MAGISTRATE JUDGE RUETER'S ORDER LIMITING THE TIME OF DISCOVERY WAS NOT CLEARLY ERRONEOUS, UPON CONSIDERATION OF THE EXCEPTIONS AND OBJECTIONS OF MAGISTRATE'S ORDER OF SAUDI, THE RESPONSE OF ACROMARIT, THE REPLY OF SAUDI AND THE SUR REPLY THERETO OF ACOMARIT, IT IS ORDERED THAT THE MOTION IS DENIED (SIGNED BY JUDGE JAMES M. KELLY) 6/25/02 ENTERED AND COPIES MAILED (ph) (Entered: 06/25/2002)
07/10/2002	27	MOTION by PLAINTIFF SHERIFF

		SAUDI TO EXTEND THE DISCOVERY DEADLINE ON THE JURISDICTIONAL ISSUE TO 9/15/02, AND TO SHORTEN THE TIME FOR NOTICE FOR SUBPOENA DUCES TECUM CERTIFICATE OF SERVICE. (ph) (Entered: 07/11/2002)
07/16/2002	28	Opposition by DEFENDANT ACOMARIT MARITIMES to MOTION TO EXTEND THE DISCOVERY DEADLINE ON THE JURISDICTIONAL ISSUE TO 9/15/02, AND TO SHORTEN THE TIME FOR NOTICE FOR SUBPOENA DUCES TECUM , Certificate of Service. (ph) (Entered: 07/17/2002)
07/19/2002	29	ORDER, REASSIGNING FROM THE CALENDAR OF JUDGE JAMES M. KELLY TO THE CALENDAR OF JUDGE MICHAEL M. BAYLSON . (SIGNED BY CLERK OF COURT MICHAEL E. KUNZ) 7/22/02 ENTERED AND COPIES MAILED (ph) (Entered: 07/22/2002)
07/24/2002	30	ORDER GRANTING IN PART, DENYING IN PART MOTION TO EXTEND THE DISCOVERY DEADLINE ON THE JURISDICTIONAL ISSUE TO 9/15/02, AND TO SHORTEN THE TIME FOR NOTICE FOR SUBPOENA DUCES TECUM,

		RESET DISCOVERY DUE FOR 8/30/02 ON THE JURISDICTIONAL ISSUE ; PLAINTIFF SHALL CAREFULLY FOLLOW THE FRCP AND THE LOCAL RULES OF THIS COURT ETC (SIGNED BY JUDGE MICHAEL M. BAYLSON) 7/25/02 ENTERED AND COPIES MAILED (ph) (Entered: 07/25/2002)
07/25/2002	31	RENEWED MOTION AND MEMORANDUM OF LAW BY DEFENDANT ACOMARIT MARITIMES TO DISMISS FOR LACK OF PERSONAL JURISDICTION , CERTIFICATE OF SERVICE. (fb) (Entered: 07/26/2002)
07/29/2002	32	MOTION by DEFENDANT ACOMARIT MARITIMES TO QUASH DEPOSITION OF J. WILLIAM CHARRIER , CERTIFICATE OF SERVICE. (ph) (Entered: 07/30/2002)
08/02/2002	33	ORDER THAT DEFENDANT'S MOTION TO QUASH DEPOSITION OF J. WILLIAM CHARRIER IS DENIED WITHOUT PREJUDICE. (SIGNED BY JUDGE MICHAEL M. BAYLSON) 8/5/02 ENTERED AND COPIES MAILED. FAXED BY CHAMBERS 8/2/02. (afm) (Entered: 08/05/2002)
08/09/2002	34	MOTION by PLAINTIFF SHERIFF SAUDI TO COMPEL

		DEPOSITIONS , TO EXTEND TIME FOR COMPLETION OF DISCOVERY , CERTIFICATE OF SERVICE. (ph) (Entered: 08/09/2002)
08/15/2002	36	ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DEPOSITIONS ON JURISDICTIONAL ISSUES, GRANTING MOTION TO EXTEND TIME FOR COMPLETION OF DISCOVERY, RESET DISCOVERY DUE FOR 9/16/02 (SIGNED BY JUDGE MICHAEL M. BAYLSON) 8/16/02 ENTERED AND COPIES MAILED AND FAXED BY CHAMBERS. (ph) (Entered: 08/16/2002)
08/26/2002	37	MOTION by DEFENDANT ACOMARIT MARITIMES FOR PROTECTIVE ORDER TO QUASH DEPOSITIONS OF J. WILLIAM CHARRIER AND AMERICAN AUTOMAR'S CORPORATE REPRESENTATIVE , CERTIFICATE OF COUNSEL, CERTIFICATE OF SERVICE. (ph) (Entered: 08/27/2002)
08/28/2002	38	Response and objection by PLAINTIFF SHERIFF SAUDI to SECOND MOTION FOR PROTECTIVE ORDER TO QUASH DEPOSITIONS OF J. WILLIAM CHARRIER AND AMERICAN AUTOMAR'S CORPORATE

		REPRESENTATIVE , Certificate of Service. (ph) (Entered: 08/29/2002)
08/28/2002	39	Reply by DEFENDANT ACOMARIT MARITIMES to response to MOTION FOR PROTECTIVE ORDER TO QUASH DEPOSITIONS OF J. WILLIAM CHARRIER AND AMERICAN AUTOMAR'S CORPORATE REPRESENTATIVE, Certificate of service (ph) (Entered: 08/29/2002)
09/03/2002	40	ORDER GRANTING MOTION FOR PROTECTIVE ORDER TO QUASH DEPOSITIONS OF J. WILLIAM CHARRIER AND AMERICAN AUTOMAR'S CORPORATE REPRESENTATIVE ETC (SIGNED BY JUDGE R. B. SURRICK) 9/4/02 ENTERED AND COPIES MAILED AND FAXED 9/3/02. (ph) (Entered: 09/04/2002)
09/09/2002	41	MOTION AND MEMORANDUM OF LAW by DEFENDANT ACOMARIT MARITIMES TO STRIKE PLAINTIFF'S PLEADINGS , CERTIFICATE OF SERVICE. (ph) (Entered: 09/10/2002)
09/09/2002	42	MOTION by PLAINTIFF SHERIFF SAUDI TO COMPEL DEPOSITIONS OF WITNESSES, THOMAS GARRETT AND WILLIAM GIBBS , TO COMPEL PRODUCTION OF DOCUMENTS , CERTIFICATE OF SERVICE. (ph)

(Entered: 09/10/2002)

09/11/2002	43	MOTION by DEFENDANT ACOMARIT MARITIMES FOR PROTECTIVE ORDER , TO QUASH DEPOSITIONS OF JANET SAEDI AND OSPREY SHIP MANAGEMENT INC'S CORPORATE REPRESENTATIVE , MEMORANDUM, CERTIFICATE OF COUNSEL, CERTIFICATE OF SERVICE. (ph) (Entered: 09/12/2002)
09/11/2002	44	Memorandum by DEFENDANT ACOMARIT MARITIMES in opposition to MOTION TO COMPEL DEPOSITIONS OF WITNESSES, THOMAS GARRETT AND WILLIAM GIBBS, MOTION TO COMPEL PRODUCTION OF DOCUMENTS , Certificate of Service. (ph) (Entered: 09/12/2002)
09/11/2002-		CROSS MOTION by DEFENDANT ACOMARIT MARITIMES FOR SANCTIONS (SEE PAPER # 44) (ph) (Entered: 09/12/2002)
09/12/2002	45	AMENDED MOTION by DEFENDANT ACOMARIT MARITIMES FOR PROTECTIVE ORDER , TO QUASH DEPOSITIONS OF JANET SAEDI, OSPREY SHIP MANAGEMENT, INC'S CORPORATE DESIGNEE AND WILLIAM GIBBS , MEMORANDUM, CERTIFICATE

		OF COUNSEL, CERTIFICATE OF SERVICE. (ph) (Entered: 09/12/2002)
09/16/2002	46	MOTION AND MEMORANDUM OF LAW by DEFENDANT ACOMARIT MARITIMES FOR A PROTECTIVE ORDER TO QUASH DEPOSITIONS OF THOMAS GARRETT, WILLIAM GIBBS, JANET SAEDI and OSPREY SHIP MANAGEMENT, INC. , CERTIFICATE OF COUNSEL, CERTIFICATE OF SERVICE. (mbh) (Entered: 09/16/2002)
10/03/2002		Tele-conference SET at 10:00 10/18/02 (dt) (Entered: 10/03/2002)
10/04/2002	47	MOTION by PLAINTIFF SHERIFF SAUDI TO EXTEND TIME WITHIN WHICH TO TAKE DEPOSITION OF CAPTAIN WILLIAM GIBBS , MEMORANDUM, CERTIFICATE OF SERVICE. (ph) (Entered: 10/04/2002)
10/15/2002	48	Opposition by DEFENDANT ACOMARIT MARITIMES SERVICES, S.A. to Plaintiff's MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO TAKE DEPOSITION OF CAPTAIN WILLIAM GIBBS, Certificate of Service. (mbh) (Entered: 10/15/2002)
10/15/2002	49	Supplemental Response by PLAINTIFF SHERIFF SAUDI to

		MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION , Certificate of Service. (ph) (Entered: 10/16/2002)
10/15/2002	50	MOTION by PLAINTIFF SHERIFF SAUDI TO STRIKE ACOMARIT SERVICES MARITIMES, S.A.'S PLEADINGS , CERTIFICATE OF SERVICE. (ph) (Entered: 10/16/2002)
10/16/2002	51	Response by PLAINTIFF SHERIFF SAUDI to DEFENDANT'S MOTION TO STRIKE PLEADINGS, Certificate of Service. (mbh) (Entered: 10/16/2002)
10/21/2002	52	ORDER DENYING AS MOOT [42-1] MOTION TO COMPEL DEPOSITIONS OF WITNESSES, THOMAS GARRETT AND WILLIAM GIBBS. (SIGNED BY JUDGE MICHAEL M. BAYLSON) 10/21/02 ENTERED AND COPIES MAILED BY CHAMBERS. (gn) (Entered: 10/21/2002)
10/21/2002	53	ORDER DENYING AS MOOT [43-1] MOTION FOR PROTECTIVE ORDER AND [43-2] MOTION TO QUASH DEPOSITIONS OF JANET SAEDI AND SHIP MANAGEMENT INC'S CORPORATE REPRESENTATIVE. (SIGNED BY JUDGE MICHAEL M. BAYLSON) 10/21/02 ENTERED AND COPIES MAILED BY CHAMBERS. (gn)

		(Entered: 10/21/2002)
10/21/2002	54	ORDER DENYING AS MOOT [45-1] MOTION FOR PROTECTIVE ORDER AND [45-2] MOTION TO QUASH DEPOSITIONS OF JANET SAEDI, OSPREY SHIP MANAGEMENT, INC'S CORPORATE DESIGNEE AND WILLIAM GIBBS. (SIGNED BY JUDGE MICHAEL M. BAYLSON) 10/21/02 ENTERED AND COPIES MAILED BY CHAMBERS. (gn) (Entered: 10/21/2002)
10/21/2002		ORDER DENYING AS MOOT [46-1] MOTION FOR A PROTECTIVE ORDER TO QUASH DEPOSITIONS OF THOMAS GARRETT, WILLIAM GIBBS, JANET SAEDI and OSPREY SHIP MANAGEMENT, INC. (SIGNED BY JUDGE MICHAEL M. BAYLSON) 10/21/02 ENTERED AND COPIES MAILED BY CHAMBERS. (SEE PAPER #46) (gn) (Entered: 10/21/2002)
10/22/2002	55	ORDER THAT DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S PLEADINGS IS DENIED. PLIANITFF'S MOTION TO STRIKE DEFENDANT'S PLEADINGS IS DENIED. PLAINTIFF'S MOTION TO EXTEND TIME WITHIN WHICH TO TAKE THE DEPOSITIION OF WILLIAM GIBBS IS GRANTED. PLAINTIFF

		SHALL FILE BRIEF NO LATER THAN 11/25/02 . PLAINTIFF SHALL FILE ONE MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS NO LATER THAN 11/18/02 (SIGNED BY JUDGE MICHAEL M. BAYLSON) 10/22/02 ENTERED AND COPIES MAILED BY CHAMBERS. (mbh) (Entered: 10/22/2002)
11/20/2002	56	MOTION by PLAINTIFF SHERIFF SAUDI TO ENLARGE TIME TO FILE MOTION TO COMPEL , CERTIFICATE OF SERVICE. (mbh) (Entered: 11/21/2002)
11/21/2002	57	Opposition by DEFENDANT ACOMARIT MARITIMES to MOTION TO ENLARGE TIME TO FILE MOTION TO COMPEL , Certificate of Service. (ph) (Entered: 11/22/2002)
11/26/2002	58	ORDER GRANTING MOTION TO ENLARGE TIME TO FILE MOTION TO COMPEL, RESET MOTION FILING DEADLINE FOR 12/2/02 (SIGNED BY JUDGE MICHAEL M. BAYLSON) 11/27/02 ENTERED AND COPIES BY CHAMBERS (ph) (Entered: 11/27/2002)
12/02/2002	59	Statement by PLAINTIFF SHERIFF SAUDI re: position as to 28 USC sect 1407 Multi district litigation transfer, Certificate of service (ph) (Entered:

12/02/2002)

12/02/2002	60	Bench Brief by DEFENDANT ACOMARIT MARITIMES addressing first filed doctrine and consolidation of pending cases, Certificate of Service. (ph) (Entered: 12/02/2002)
12/03/2002	61	Plaintiff's second supplementalresponse to ACOMARIT SERVICES MARITINMES, S.A'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION , Certificate of Service. (ph) (Entered: 12/03/2002)
12/05/2002	62	MOTION by PLAINTIFF SHERIFF SAUDI TO COMPEL PURSUANT TO COURT ORDER DATED 11/25/02 , CERTIFICATE OF SERVICE. (ph) (Entered: 12/06/2002)
12/09/2002	63	Reply by DEFENDANT ACOMARIT MARITIMES to plaintiff's second supplemental response to defendant's renewed motion and memorandum of law to dismiss for lack of personal jurisdiction, Certificate of service (ph) (Entered: 12/10/2002)
12/17/2002	64	Memorandum by DEFENDANT ACOMARIT MARITIMES in opposition to plaintiff's MOTION TO COMPEL PURSUANT TO COURT ORDER DATED 11/25/02 ,

		Certificate of Service. (ph) (Entered: 12/18/2002)
01/21/2003	65	Transcript for Motion Hearing held on 10/18/02. Audio Operator: Kashner (md) (Entered: 01/22/2003)
01/31/2003	66	MEMORANDUM AND ORDER DENYING PLAINTIFF'S MOTION TO COMPEL PURSUANT TO COURT ORDER DATED 11/25/02; GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (SIGNED BY JUDGE MICHAEL M. BAYLSON) 2/3/03 ENTERED AND COPIES MAILED (ph) (Entered: 02/03/2003)
01/31/2003		Case closed (kv) (Entered: 02/04/2003)
02/28/2003	67	Notice of appeal by PLAINTIFF SHERIFF SAUDI . Fee Status: paid . Copies to: JUDGE MICHAEL M. BAYLSON , Clerk USCA, Appeals Clerk, and KEITH B. LETOURNEAU, THOMAS R. NORK, CARL D. BUCHHOLZ III, Certificate of service (ph) (Entered: 03/03/2003)
02/28/2003	68	Copy of Clerk's notice to USCA re: [67-1] appeal . (ph) (Entered: 03/03/2003)
03/04/2003		CERTIFIED AND TRANSMITTED RECORD ON APPEAL TO U.S. COURT OF APPEALS. (Pleading #

		27, not included). (ke) (Entered: 03/04/2003)
03/05/2003		Notice of Docketing ROA from USCA Re: [67-1] appeal USCA NUMBER: 03-1609 . 3/5/03 (ph) (Entered: 03/05/2003)
03/24/2003	69	Copy of TPO form ref: [67-1] appeal . (ph) (Entered: 03/24/2003)
10/14/2004	70	CERTIFIED COPPY OF JUDGMENT ORDER of USCA DATED 9/17/04 THAT THE ORDER OF THE DISTRICT COURT ENTERED 2/3/03 BE AND THE SMAE IS HEREBY AFFIRMED. COSTS TAXED AGAINST APPELLANT. ALL OF THE ABOVE IN ACCORDANCE WITH THE OPINION OF THIS COURT. (mar,) (Entered: 10/14/2004)
10/14/2004		Appeal Record Returned: [67] Notice of Appeal (mar,) (Entered: 10/14/2004)

US Court of Appeals for the Third Circuit
Case Summary

Court of Appeals Docket #: 03-1609 Filed: 3/4/03
Nsuit: 4340 P.I.: Marine
Saudi v. Acomarit Maritimes
Appeal from: Eastern District of Pennsylvania

Lower court information:
District: 0313-2 : 01-cv-04301
Trial Judge: Michael M. Baylson, District Judge

2/18/04 CALENDARED for Thursday, April 22, 2004. (mac)

4/20/04 MOTION by Appellant Sheriff Saudi to Take Judicial Notice Pursuant to Rule 201(f), F.R.E., filed. Answer due 5/3/04. Certificate of Service dated 4/19/04. (rls)

4/22/04 ARGUED Thursday, April 22, 2004 Panel: Scirica, Chief Judge, Rosenn and Greenberg, Circuit Judges. Counsel for Appellant: Joe A. Izen, Jr. and Counsel for Appellee: Thomas R. Nork (mac)

4/30/04 RESPONSE in opposition filed by Appellee Acomarit Maritimes to Appellant's motion to take Judicial Notice, filed. Certificate of Service dated 4/29/04. (rls)

9/17/04 NOT FOR PUBLICATION NOT PRECEDENTIAL REPORTED OPINION (Chief Judge Scirica, Authoring Judge, Rosenn and Greenberg, Circuit Judges), filed. Total # of Pages: 15. (awi)

9/17/04 JUDGMENT, Affirmed. Costs taxed against Appellant, filed. (awi)

9/20/04 ORDER (Chief Judge Scirica, Authoring Judge, Rosenn and Greenberg, Circuit Judges) denying the motion by Appellant to take Judicial Notice pursuant to

rule 201(f) F.R.E., filed. (dmm)

10/12/04 MANDATE ISSUED, filed. (rls)

10/14/04 RECORD RETURNED. (ema)

12/27/04 U.S. Supreme Court order dated 12/22/04, at S.C. number: 04A542, granting an extension of time to and including 2/14/05 within which to file petition for writ of certiorari, filed. (anh)

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	:	CIVIL ACTION
Plaintiff	:	
	:	
V.	:	
	:	
ACOMARIT MARITIMES	:	
SERVICES, S.A.,	:	
Defendant.	:	NO. 01-4301

MEMORANDUM

Baylson, J. **January 31, 2003**

In Wagner's opera, *The Flying Dutchman,* the hero, a ship captain, is consigned by fate to sail the seas in virtual perpetuity and may land only once every seven years. Wagner's opera sets to music an ancient legend; its modern incarnation are the ocean-going supertankers, which are so large, they cannot dock in any port. For good business reasons, they are usually owned by foreign corporations and avoid transactions in the United States, which may subject them to the jurisdiction of U.S. courts. The cargo on these huge vessels must be unloaded many miles offshore. If a person is injured during offshore loading, where may suit be filed? Thus, the legal issue presented by this case - are the owners/operators of these ships subject to jurisdiction in the United States for tort claims when the ships never enter the territorial waters of the United States?

Thus, the Dutchman's fate of continual years at sea has become a benefit for the modern supertanker. As the opera ends, the Dutchman's yearning for dry land has brought him romance and redemption, but he then drowns in the arms of his beloved. However, the modern, perpetually ocean-roaming supertanker has neither the physical ability,

nor the legal desire, to touch land. If the limits of the jurisdiction of U.S. courts do not allow the owner or operator of these ships to be subject to process in the United States, then the only recourse for someone who was injured by the operation of this ship is to seek redress in and under the laws of the country in which the ship's owners or managers are based.

For the reasons which follow in this Memorandum, the Court concludes that although the Plaintiff, Captain Sheriff Saudi, a resident of Texas, alleges a significant personal injury while working in the Gulf of Mexico, fifty miles offshore, to help unload the Marine Atlantic, a supertanker managed by the Defendant, Acomarit Maritimes Services, S.A., (now known as V. Ships Switzerland, S.A.) ("Acomarit"), a foreign corporation with its principal place of business in Sw erland, Plaintiff has not met his burden of showing that Acomarit is subject to jurisdiction in this district, and thus Acomarit's Motion to Dismiss for lack of personal jurisdiction will be granted.

I. Background

A. Factual Background

The following facts are construed in the light most favorable to Plaintiff.

Plaintiff was employed as a "mooring master" by American Eagle Tankers, a company providing maritime services in the Gulf of Arabia, the Red Sea, the Mediterranean Sea, the Atlantic Ocean, and the Gulf of Mexico. (Pl.'s Compl. at 2-3 ¶ 1). In his position as a mooring master, Plaintiff was assigned by his employer to moor supertankers or vessels on the high seas for the purpose of onloading and offloading petroleum and other cargo. Id. at 3 ¶ 1.

Acomarit performs maritime services including managing supertankers, which occasionally requires onloading and offloading of petroleum. at 3 ¶ 2.

On May 17, 1999, Plaintiff left the American Discovery, a vessel managed and operated by his employer, disembarked onto a tender vessel and then was placed aboard the S/T Marine Atlantic, a vessel managed by Acomarit, anchored approximately 60 miles off the coastline of Texas. Id at 3 ¶ 3; Bille Aff ¶ 3, Renewed Mot. Dismiss, Ex. 4. The Marine Atlantic, which weighs approximately 100,000 deadweight tons, with 400,000 tons of cargo-carrying capacity, is unable to enter American ports in the continental United States because the vessel's 75-foot draft exceeds the depth of domestic ports. (Bille Aff. ¶ 3, Renewed Mot. Dismiss, Ex. 4). After conducting preliminary inspections, Plaintiff got into a transfer basket attached to a hose crane, which was being used to lift him onto the tender vessel. (Pl.'s Compi. at 3 ¶ 3). While Plaintiff was inside the basket and the crane was transferring him to the tender vessel, the crane collapsed, and Plaintiff fell approximately fifty feet into the Gulf of Mexico. Id. Plaintiff claims that, although he jumped clear of the basket, he was lashed by the wire support cable of the crane, which broke off from its mount on the vessel and fell into the water with him. ~ He alleges that he suffered extensive injuries including a broken arm, nerve damage, broken ribs, injured lungs, as well as pain and suffering, and lost wages and income. Id. at 3-4 ¶ 4.

B. Procedural Background

The instant case is one of several actions that Plaintiff has filed in connection with his May 17, 1999 accident against various defendants in the United States District Courts for the Southern District of Texas, Eastern District of New York, District of Maryland, and District of

Columbia, and state courts in Texas and Wisconsin. Personal jurisdiction against Acomarit has not been established in the federal courts, and Plaintiffs Southern District of Texas action against Acomarit, the defendant in the instant case, was dismissed for lack of personal jurisdiction[1]. Plaintiff has appealed that decision to the United States Court of Appeals for the Fifth Circuit.

Plaintiff filed his original Complaint in the instant case in the Philadelphia Court of Common Pleas on May 16, 2001, claiming that jurisdiction was proper because Acomarit maintained an employee, Thomas Garrett ("Garrett"), a Nazareth, Pennsylvania[2] resident who allegedly carried out Acomarit's business from Pennsylvania. **Id**. at1-2 ¶¶ 1-2. Count I states a claim for common-law negligence against Acomarit for failing to properly inspect and maintain the Marine Atlantic's crane, which failure was the proximate cause of his injuries. Id. at 4 ¶¶ 5-7. Count II states a claim

---

[1]Plaintiffs first lawsuit concerning his accident was filed in the Southern District of Texas, where he sued Acomarit and what Plaintiff alleged was a joint venture between Acomarit and another company, called Osprey-Acomarit Ship Management, Inc. Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d 469, 475 (S.D. Tex. 2001). Plaintiff also sued the owner of the Marine Atlantic, the manufacturer and servicer of the allegedly defective crane, and the owner of the crude oil being stored on the Marine Atlantic. **Id.**at 475. Although the District Court reserved decision for additional discovery as to some of these defendants, it granted Acomarit's motion to dismiss, finding that Plaintiff had not proved personal jurisdiction as to Acomarit under the Texas long-arm statute, or under Fed. R. Civ. P. 4(k)(2). **Id.**at 483. As to the latter grounds, see discussion infra Part IV.D.

[2]Nazareth is in the Eastern District of Pennsylvania.

against Acomarit for negligence under maritime law for failing to make the Marine Atlantic safe for Plaintiffs entry to perform the maritime operations for which he was hired. Id. at 5-6 ¶ 3. Plaintiff seeks $1 million in actual damages and $10 million in punitive damages. Id. at 6.

Acomarit timely removed to this Court based on diversity jurisdiction under 28 U.S.C. § 1332 and federal question jurisdiction pursuant to 28 U.S.C. § 1331, as the case involves admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333. Plaintiff filed a Motion to Remand, which was denied, and Acomarit filed a Motion to Dismiss for Lack of Personal Jurisdiction, which was denied with leave to refile by July 30, 2002. Plaintiff then filed a Motion to Compel Answers to Admissions, Production of Documents, and Interrogatories, which was referred to a magistrate judge. The Motion was granted in part, but the magistrate judge ordered discovery limited to the time period of January 1, 1998 through the present and to jurisdictional contacts with Pennsylvania. Plaintiffs objections to the magistrate judge's order were the subject of a Memorandum Order, in which Plaintiffs objections were denied. Saudi v. Acomarit Services Maritimes, S.A., No. Civ.A. 01-4301, 2002 WL 1373077, at *2 (E.D. Pa. June 24, 2002).

On July 25, 2002, Acomarit filed a Renewed Motion to Dismiss for Lack of Personal Jurisdiction, and Plaintiff took depositions and filed numerous discovery motions.

On October 18, 2002, this Court held a hearing on all pending motions. An Order followed granting Plaintiffs Motion to Extend Time to Take the Deposition of William Gibbs, a former employee of Osprey-Acomarit Ship Management ("Osprey-Acomarit"), a company which Plaintiff alleges was involved in a joint venture with

Acomarit. The Court also allowed Plaintiff to file one more Motion to Compel the Production of Documents limited to Acomarit's jurisdictional contacts with Pennsylvania and to the time period of January 1, 1998 to May 17, 1999. The Court further ordered Plaintiff and Acomarit to file briefs discussing jurisdictional issues arising from Gibbs' deposition because of the several complaints relating to Plaintiffs injury filed in different district courts, and to file briefs regarding their respective positions on the first-filed rule and whether reference should be made to the Judicial Panel on Multi-District Litigation pursuant to 28 U.S.C. § 1407.[3]

II. Legal Standard

Fed. R. Civ. P. 4(e) allows a district court to assert personal jurisdiction over a nonresident to the extent allowed

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[3]The first-filed rule "gives a court 'the power' to enjoin the subsequent prosecution of proceedings involving the same parties and the same issues already before another district court." E.E.O.C. v. University of Pennsylvania, 850 F.2d 969, 971-72 (3d Cir. 1988). The rule does not apply in the instant case because personal jurisdiction has not been established in the Southern District of Texas, where Plaintiff first filed his action, or in any other district. The "interest of justice is served" by transferring the case "to a district in which personal jurisdiction is clearly established." Cherry Communications. Inc. v. Coastal Telephone Co., 906 F. Supp. 452, 455 n.4 (N.D. Ill. 1995). Additionally, the parties, jurisdictional contacts, and issues differ in each forum in which Plaintiff has sued. Therefore, the first-filed rule does not apply.

The statute governing multi-district litigation, 28 U.S.C. § 1407, would not apply until and unless Plaintiff establishes jurisdiction over one or more defendants in multiple districts, which has not yet occurred.

by the law of the state in which it sits. See Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 63 (3d Cir. 1984). Pennsylvania's long-arm statute provides that a court may exercise personal jurisdiction over non-residents "to the fullest extent allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann. § 5322(b).

Due process requires that the defendant have "minimum contacts" with the forum state, and that the exercise ofjurisdiction comports with "traditional notions of fair play and substantial justice." Remick v. Manfredy, 238 F.3d 248, *255* (3d Cir. 2001) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. *95* (1945)). "Minimum contacts must have a basis in 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Remick, 238 F.3d at *255* (quoting Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109, 107 S. Ct. 1026, 94 L. Ed. 2d. 92 (1987) (quoting Burger King Corp. v. Ruclzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d *528 (1985)).* When determining whether personal jurisdiction exists, the court must resolve the question based on the circumstances that the particular case presents. Burger King, 471 U.S. at 485.

A court may exercise personal jurisdiction based on a defendant's general or specific contacts with the forum. General jurisdiction is based upon the defendant's "continuous and systematic contacts" with the forum. General Elec. Co. v. Deutz AG, 270 F.3d 144, 150 (3d Cir. 2001) (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-416, 104 S. Ct. 1868,80 L. Ed. 2d 404 (1984)). Specific jurisdiction is appropriate only if the "plaintiffs cause of action arises out of a defendant's forum-

related activities, such that the defendant 'should reasonably expect being haled into court' in that forum." Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prod. Co., 75 F.3d 147, 151 (3d Cir. 1996) (quoting Worldwide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)). Specific jurisdiction is established where the defendant "purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or relate[] to' those injuries." BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000) (quoting Burger King, 471 U.S. at 472)).

In deciding a motion to dismiss for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), the allegations of the complaint are taken as true. However, once a jurisdictional defense is raised, the plaintiff bears the burden of proving, through affidavits, or competent evidence, sufficient contacts with the forum state to establish personal jurisdiction. See Dayhoff Inc. v. H.J. Heinz Co., 86 F.3d 1287, 1302 (3d Cir. 1996), cert denied, 519 U.S. 1028, 117 S. Ct.583, 136 L. Ed .2d 513 (1996)). The plaintiff must establish those contacts with reasonable particularity. See Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1996). Once the plaintiff makes out a prima f.acie case in favor of personal jurisdiction, the burden shifts to the defendant to establish that the presence of some other considerations would render jurisdiction unreasonable. See Carteret Say. Bank v. Shushan, 954 F.2d 141, 150 (3d Cir. 1992).

III. Discussion

A. Parties' Contentions

Acomarit summarized its contentions that it is not subject to personal jurisdiction in this District at the hearing

as follows:

> MR. NORK: Acomarit is.. an international ship management company. It's one of the biggest ship management companies in the world and it's a collection of... men and women over in Geneva who have contracted with ship owners all around the world, and they operate these ships.
>
> They insure their crewing, their provisioning, and that they are maintained and get from "A" to "B." And that's what Acomarit does. And it - its hub is in Geneva, and it controls ships around the world. It doesn't do that business here in Pennsylvania. In fact, in the time window that we're looking at for discovery here, one ship and only one ship managed by Acomarit made I think a day-and-ahalf, two day port call to discharge oil.. in 2000.
>
> So as a practical matter,. .this company doesn't do business in this state. Which leads us to Tom Garrett... He sailed primarily on tankers, and he is an expert on tanker operations, and the regulatory work that controls those ships..
>
> Tom Garrett's job. was to work on ships. Go to ships around the world, go to ships in U.S. ports, and inspect, audit...
>
> He never once did that in Pennsylvania. He never once boarded a ship operated by Acomarit or anyone else in Pennsylvania. He has never done business in Pennsylvania. He hasn't solicited business, hasn't entered into contracts, hasn't marketed Acomarit's business, or anyone else's business. He hasn't injected himself, or through him Acomarit, into the commerce of this state. He simply lives here.

> And what if he did send a few reports from his home, and had a few phone calls and e-mails to and from his home directly to Acomarit. It's not substantial, and it's not continuous. Really, in essence, his living in Pennsylvania is fortuitous.

(Hearing Tr. at 33-36).

Acomarit's contract with Marine Atlantic, Ltd., the owner of the Marine Atlantic, to manage the vessel was not negotiated in Pennsylvania, neither entity being a Pennsylvania corporation, and the contract did not require performance in Pennsylvania. (Bille Aff. ¶ 4, Renewed Mot. Dismiss, Ex. 4). Acomarit is not registered or authorized to conduct business in Pennsylvania, nor does it maintain an agent for service of process in the state. Id. ¶ 2. Acomarit has never maintained a bank account, mailing address, or telephone listing in Pennsylvania, has not paid any Pennsylvania taxes, has not acquired or purchased goods or materials from sources located in Pennsylvania, has not advertised in any publications distributed in Pennsylvania, and does not own or lease any real property here. Id.

Plaintiff's primary argument for contending that Acomarit is subject to personal jurisdiction in this District is based on the activities of Pennsylvania resident Garrett, whom Plaintiff alleges worked for Acomarit:

> MR. SAUDI: [A]ny contact that [Garrett] started in the [Eastern] District of Pennsylvania, to go - let us say he received a phone call to go to a ship in South Africa. That's considered to be a jurisdiction for Pennsylvania. If he comes back again, and put a report in his computer about what did he do in district, that's basically a connection with Pennsylvania.

> If he makes a phone call or fax, if he takes any instructions from here to go and make a tour for two or three months and come back again, that is a connection with Pennsylvania....
>
> That was where he would receive fax. That was he - where he might be able to send some documents to them. This is where he was working from.
>
> We consider him employee of Acomarit, period. So there is an acid test that shows up jurisdiction if he's an employee. Part of it are (sic) who pays him? Now if he's paid - and allow me to say under table - but if he's paid actually from Acomarit through Osprey Acomarit, he is an employee of Osprey Acomarit for doing nothing.
>
> He is the agent because he takes [money] from Acomarit. He's reimbursed all his expenses for Acomarit. Even though he's working for other companies, it all rounds back to A[c]omarit, who's paying him. And that's most of everything goes back and forth to Acomarit.

(Hearing Tr. at 53-5 *5).*

> Plaintiffs allegations of Acomarit's jurisdictional contacts with the Pennsylvania will be

examined.

1. Specific Personal Jurisdiction

Plaintiff does not allege specific personal jurisdiction nor does the underlying accident implicate any action arising out of or relating to Acomarit's contacts with or activities in Pennsylvania, such that Acomarit "should reasonably expect

being haled into court" in Pennsylvania. Vetrotex, 75 F.3d at 151 (quoting Worldwide Volkswagen, 444 U.S. at 297). Plaintiffs claims against Acomarit relate only to Plaintiffs May 17, 1999 accident, which occurred in the Gulf of Mexico, not in Pennsylvania or within its territorial waters. (Pl.'s Compl. at 3 ¶ 3). Plaintiff does not allege that Acomarit "purposefully directed" its activities at the forum or that his alleged injury arose from or is related to those activities. Deutz AG, 270 F.3d at 150 (quoting Burger King, 471 U.S. at 472). Therefore, the Court has no basis to exercise specific personal jurisdiction over Acomarit.

2. General Personal Jurisdiction

Plaintiff alleges that the Court should exercise general personal jurisdiction over Acomarit. (Pl.'s Supp. Resp. Def's Mot. Dismiss at 15). Plaintiffs basis for general personal jurisdiction is summarized in his Complaint:

During various times material to this Complaint leading up to Plaintiffs injury Acomarit Maritimes Services, S.A. maintained an employee, Thomas Garrett, who was a resident of the State of Pennsylvania. Thomas Garrett acted as a "port captain" for all of Acomarit Services Maritimes Services, S.A.'s vessels which Acomarit Services Maritimes Services, S.A. owned or managed and which were either stationed in the Gulf of Mexico, the Caribbean, or the Atlantic and Pacific Oceans contiguous with the coastlines of the United States of American [sic] or made port calls in the United States and Central America. Thomas Garrett was an employee of Acomarit whom Acomarit maintained and stationed in the State of Pennsylvania to carry out the business of Acomarit, including, but not limited to the attending, provisioning, and inspection, of Acomarit-owned and managed vessels.

(Pl.'s Compl. at 1-2 ¶ 2).

Pursuant to prior rulings of this Court, Plaintiff was allowed to pursue discovery on jurisdictional contacts with Pennsylvania from January 1, 1998 to the present. During the extensive jurisdictional discovery that has occurred in this action, Plaintiff has deposed the following people: Thomas Garrett; J. William Charrier, president of American Automar, Inc., a partner in an alleged joint venture with Acomarit; Janet Saedi, president of Osprey Ship Management; and William Gibbs, former president of Osprey-Acomarit during Garrett's employment there. (Pl.'s Second Supp. Resp. Def.'s Mot. Dismiss at 1-2). Acomarit has also turned over correspondence between Captain Jacques Bille, Acomarit's general manager and authorized agent, and Garrett during the relevant jurisdictional period. (Def.'s Renewed Mot. Dismiss Exs. 7A-E). Based on these discovery materials, Plaintiff alleges that general personal jurisdiction is appropriate in this Court. This information will now be discussed.

3. Acomarit's Alleged Contacts with Pennsylvania

The following summarizes Plaintiffs evidence of Acomarit's jurisdictional contacts with Pennsylvania.

a. Plaintiff Contends Osprey-Acomarit Was a Joint Venture Between Defendant Acomarit and American Automar, Inc.

In 1994, shortly after Tom Garrett began working for Osprey Ship Management, the wholly-owned subsidiary of American Automar, Inc., which owns a fleet of ships, Acomarit Holdings Limited purchased a minority interest in Osprey Ship Management, becoming a coowner of the company along with American Automar. (Bille Aff ¶ 5, Renewed Mot. Dismiss, Ex. 4; Saedi Dep. at 9-16, Pl.'s

Supp. Resp. Def.'s Renewed Mot. Dismiss, Ex. BB). The new company was called Osprey-Acomarit Ship Management. Osprey-Acomarit, which operated in Bethesda, Maryland, was supposed to provide ship management services for American Automar's fleet of ships. Id. at 11-12.

Plaintiff cites to Gibbs' deposition to support his assertion that Osprey-Acomarit was formed as a result of Acomarit entering into what the parties colloquially refer to as a "joint venture" with American Automar to pursue the business of ship management. (Pl.'s Second Supp. Resp. Def.'s Mot. Dismiss at 3). However, the deposition testimony does not support this contention:

Q. January 1998, American Automar was under an agreement with some entity which have bought [sic] up Acomarit—Osprey-Acomarit Ship Management; is that correct—

A. Yes.

Q. —1998?

A. Yes.

Q. Would you tell me who was American Automar is in agreement with at that time?

A. Acomarit Holdings Limited of Bermuda.

* * *

Q. What business did the joint venture have been conducted, sir?

A. Ship management.

Q. Solely for ship management, right?

A. Yes.

Q. And where did this joint venture conduct business?

A. Bethesda, Maryland.

(Gibbs Dep. at 14, 19, Def.'s Reply. Pl.'s Second Supp. Resp. Def.'s Mot. Dismiss, Ex. 2).

This testimony does not implicate any contacts with Pennsylvania and shows only that American Automar entered into an agreement with Acomarit Holdings Limited of Bermuda[4] to form Osprey-Acomarit. It does not support the existence of any agreement between American Automar and Defendant Acomarit.

Plaintiff further refers to a December 15, 1998 letter from J. William Chamer, American Automar' s president, to Giorgio Sulser of Acomarit in Geneva, Switzerland, terminating the agreement between American Automar and Acornarit Holdings Limited. (Pl.'s Aff. Opp. Def's Mot. Dismiss Ex. 3). The letter states that "American Automar (AAI) will repurchase Acomarit Holdings' (AHL) shares in Osprey-Acomarit Ship Management (OASM) for a total consideration of [redacted amount] in cash plus Automar's shares representing a 49% interest in Acomarit North America (ANA). AAI and AHL agree that ANA is Mot. Dismiss Ex. 3). The letter states that "American Automar (AAI) will repurchase Acomarit Holdings' (AHL) shares in

---

[4]Plaintiff has not established any relationship between Acomarit Holdings Limited of Bermuda and Acomarit Maritirnes Services, S.A., the Swiss corporation defendant in the instant action

Osprey-Acomarit Ship Management (OASM) for a total consideration of [redacted amount] in cash plus Automar's shares representing a 49% interest in Acomarit North America (ANA). AAI and AHL agree that ANA is presently inactive and its shares have no value."Id. The letter also states:

> OASM will continue to employ [redacted name][5] under the present arrangement rebilling all costs to Acomarit Geneva until May 31, 1999 unless instructed by Acomarit Geneva to terminate his employment at an earlier date. If requested by Acomarit Geneva or Acomarit (UK), OASM will enter into a further agreement to provide [redacted name] services to the Acomarit group on a cost reimbursable basis plus an administrative fee of $400 per month. Effective January 1, 1999 Acomarit Geneva will take over from OASM the advancing of expense funds in respect of [redacted name].

Id.

This letter does not implicate any contacts with Pennsylvania and shows only that American Automar terminated its agreement with Acomarit Holdings Limited. It does not support the existence of any agreement between American Automar and Defendant Acomarit.

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[5]The unredacted letter with Tom Garrett's name was provided to Plaintiff in discovery in his action in the Southern District of Texas. (Pl.'s Aff Opp. Def's Mot. Dismiss Ex.3.) At the October 18, 2002 hearing, defense counsel also said that Tom Garrett's name had been redacted from the letter. (Hearing Tr. at 62).

b. Plaintiff Contends Garrett's Employment with OspreyAcomarit is Sufficient Because Garrett Resides in Pennsylvania

Many of the details of Garrett's employment arrangement with Osprey-Acomarit, which lasted until Garrett left for another job in February 1999, can be gleaned from his affidavit:

> In my work as port captain while employed by Osprey-Acomarit Ship Management, Inc., I conducted site visits to various Acomarit operated vessels, among other companies' vessels. I reside in Pennsylvania and traveled to and from the vessels wherever those vessels called. Approximately 60 to 70% of my work involved attending vessels outside of the United States, and 30 to 40% of my work involved attending vessels in the United States. I have no recollection of ever attending on behalf of Acomarit any Acomarit operated vessels in Pennsylvania waters. I used a lap top computer to repair reports. In most cases, I prepared my reports while still aboard the vessel. In a small number of cases, I completed the preparation of my reports at home. I also occasionally received an e-mail, fax and telephone call relating to ship visits while at home. Around October, 1997, I was requested by a representative of a vessel owner to attend the installation of a Beam Extender on a vessel at layberth in Philadelphia, Pennsylvania. While Acomarit performed some functions with respect to the operation of that vessel, this work was performed by me on behalf of the vessel owner, not on behalf of Acomarit. Based on my knowledge of the circumstances, I do not believe that it was Acomarit who directed the vessel to Philadelphia.

(Garrett Aff ¶ 3, Def.'s Renewed Mot. Dismiss, Ex. 3).

In his deposition, Gibbs explained how Garrett was paid and reimbursed for his services:

A. Tom Garrett would presumably submit invoices to Geneva and when those were approved by Captain Bille the approval would be faxed to Osprey and based on that approval we would pay or reimburse Tom Garrett for those expenses.

Q. So what you're telling me is supposedly whatever he bills he sent over to Acomarit in Geneva?

A. Whatever he billed he sent to Geneva.

Q. Do you receive a copy of those?

A. We would receive a copy, as I recall, of the - what I would call the cover sheet of the expense form and that would have a total at the bottom, and we would total the totals of perhaps five or six or seven at a time of different expense reports.

***

Q. My understanding is that Captain Tom Garrett was usually paid by wire transaction for his salary; is that correct?

A. Well, I wouldn't call it a wire transfer. In American banking it would be called an electronic transfer, and ETF, as we all were.

Q. So it was an electronic transfer?

A. Yes, from the bank to the individual employee's bank account, if the individual employee so chose. It was at the option of the employee.

(Gibbs Dep. at 35-36; 39-40, Def's Reply. Pl.'s Second Supp. Resp. Def's Mot. Dismiss, Ex. 2)

This evidence, indicating that Garrett received payments by electronic funds transfer from Osprey-Acomarit to his Pennsylvania bank account, as well as reimbursement from OspreyAcomarit, does not indicate any contacts between Acomarit and Pennsylvania.

C. Garrett's Inspection of Cranes on the Marine Atlantic

Plaintiff also points to Garrett's inspections of the Marine Atlantic in the early part of 1997. (Pl.'s Second Supp. Resp. Def's Mot. Dismiss at 7). Garrett testified that he was aboard the Marine Atlantic several times while he was working for Osprey-Acomarit and inspected the cranes in "every mode possible" in early 1997 and found them to be working properly. (Garrett Dep. at 140-142, Def's Renewed Mot. Dismiss, Ex. 6). However, this information comes from Garrett's December 19, 2000 deposition in Plaintiffs lawsuit in the Southern District of Texas, (Def.'s Renewed Mot. Dismiss, Ex. 6), and Plaintiff concedes it is not admissible in the instant action. (Hearing Tr. at 47). Regardless, this deposition testimony does not indicate contacts between Acomarit and Pennsylvania.

4. **Additional Evidence Relating to Jurisdictional Contacts**

Pursuant to the magistrate judge's initial discovery order, Acomarit claims to have produced the documents in its possession that relate to Pennsylvania from the period of January 1, 1998 to the present. (Def's Renewed Mot.Dismiss , Exs. 7A-E). Few of these documents are in temporal proximity to Plaintiffs accident. One document relates to an Acomarit-managed vessel that called upon the Marcus Hook Terminal in Philadelphia nearly a year after Plaintiffs accident. Id. Exs. 7B, D. Another document relates to the non-Acomarit-managed vessel that Garrett attended in Philadelphia, which he discussed in his affidavit. Id. Ex. 7C. The vessel actually called upon Philadelphia on January 26, 1996, more than three years before Plaintiffs accident. Id.

Acomarit also has produced documents relating to Garrett's compensation and reimbursement exchanged between Osprey-Acomarit's Maryland office and Acomarit's office in Geneva. Id.. Ex. 7A. None of these documents entered or left Pennsylvania. Id.

The only documents in temporal proximity to Plaintiffs accident that relate to Pennsylvania were exchanged between Acomarit and Garrett. The first was a fax sent by Captain Bille to Garrett at his home on January 10, 1998, which discussed reimbursement for Garrett's expenses. Id. There also was a three-page report letter faxed by Garrett to Captain Bille on April 12, 1998, relating to cellular telephone communications aboard the Front Highness, a ship Garrett had inspected. Id. Additionally, Acomarit produced fax cover sheets related to Garrett's expense reports sent by Captain Bille to Captain Gibbs. Id.

B. Legal Discussion

In Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 410, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984), a helicopter accident in Peru killed American citizens, and the surviving relatives sued the defendant, a Colombian corporation, in Texas. The plaintiffs asserted that personal jurisdiction was proper because the defendant had purchased approximately 80 percent of its helicopters, spare parts, and accessories for more than $4 million from a helicopter company in Texas for seven years. Id. at 411. Additionally, the defendant sent its prospective pilots to Texas for training and the defendant's management personnel visited the helicopter company in Texas. Id. Beyond these contacts, though, the defendant had no other business contacts with Texas. Id. It had never been authorized to do business in Texas, did not have an agent for service of process there, did not sell or solicit business in Texas, did not have employees in Texas, and did not own property or maintain an office in Texas. Id.

The Supreme Court found that general personal jurisdiction over the foreign defendant was not appropriate because:

> mere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions. Nor can we conclude that the fact that Helicol sent personnel into Texas for training in connection with the purchase of helicopters and equipment in that State in any way enhanced the nature of Helicol's contacts with Texas.

Id. at 418.

The Third Circuit recently examined whether general personal jurisdiction was appropriate in BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 257 (3d Cir. 2000), in which the plaintiff, BP, a British corporation, asserted in the United States District Court for the District of New Jersey federal claims related to the misappropriation of trade secrets against the defendants, Formosa Chemical, a Taiwanese corporation, and Joseph Oat, a Pennsylvania corporation with its principal place of business in New Jersey. BP alleged that Formosa Chemical, a subsidiary of a Taiwanese conglomerate known as Formosa Plastics Group, misappropriated trade secrets related to its process for making acetic acid by copying elements of a plant design that BP's predecessor had provided to a licensee and that Formosa Chemical and Joseph Oat had entered into a contract whereby Joseph Oat would fabricate in New Jersey a number of chemical process vessels and heat exchangers using misappropriated technical specifications for ultimate use in the construction of an acetic acid plant in Taiwan. Id. at 257. BP sought a preliminary injunction to prevent Joseph Oat and Formosa Chemical from exporting their vessels to Taiwan and from taking possession of any equipment manufactured in the United States by American companies using BP's trade secrets, and Formosa Chemical moved to dismiss for lack of personal jurisdiction. Id. The district court denied Formosa Chemical's motion to dismiss finding that the company did not have sufficient contacts with New Jersey to justify assertion of jurisdiction under the state's long-arm statute but that it did have sufficient contacts with the United States as a whole to justify, jurisdiction under Fed. R. Civ. P. 4(k)(2). Id. at 258.

On appeal, the Third Circuit reviewed Formosa Chemical's contacts with the United States for the purpose of general personal jurisdiction. Id. at 262. Although Formosa Chemical exported its products to the United States, it did not have personnel or facilities in the United States and had

not advertised or solicited American business. Id. Additionally, Formosa Chemical had an arrangement with Formosa Plastics Group, whereby Formosa Chemical leased software from it and would submit bid packages to Formosa Plastics' purchasing group, which would then submit those packages to the Taiwanese agents of United States vendors, who in turn would send them to their clients in the United States. Id. at 258, 263. The Court found that these contacts were not sufficient to pierce the corporate veil and assert jurisdiction over Formosa Chemical based on the American contacts of Formosa Plastics and its affiliates. Id. Further, the Court found that Formosa Chemical's 3.5 percent stock interest in a Delaware corporation with headquarters in New Jersey did not "constitute the kind of continuous and systematic business contacts that give rise to general jurisdiction." Id at 263. Finally, the Court found the fact that Formosa Chemical had entered into four recent contracts for the purchase of chemical technology, "two of which involved [Formosa Chemical] personnel traveling to the United States for training, is insufficient. See Helicopteros 466 U.S. at 416-17, 104 S. Ct. 1868 (visits in connection with training and purchases, even if occurring at regular intervals, are insufficient basis for general jurisdiction)." Id.

The Court concluded that "considering the cumulative effect of these various contacts together, the requirements for general jurisdiction are not met." Id. On the Court's decision to reverse the district court's finding that Rule 4(k)(2) jurisdiction over the defendant was proper, see discussion infra IV.D.2.c.

The above discussion clearly illustrates that because Acomarit's contacts with Pennsylvania were sporadic at best, they could in no way be seen as "continuous and systematic" contacts with Pennsylvania. Id. at 259 (quoting Helicopteros, 466 U.S. at 416).

IV. Additional Arguments Raised by Plaintiff

A. Borrowed Servant

Plaintiff asserts that even though Garrett was paid by Osprey-Acomarit that Acomarit controlled Garrett's activities, implicating the borrowed servant doctrine. (Pl.'s Second Supp. Resp. Def.'s Mot. Dismiss at 8). He cites to a case, Total Marine Services. Inc. v. Director, Office of Worker's Compensation Programs, U.S. Dep't of Labor, 87 F.3d 774 (5th Cir. 1996), for the proposition that a worker may be in the general service of another, but that when his work is transferred with his consent or acquiescence to a third party, he becomes the servant of that third party with all the legal consequences of that relationship. Id. However, even if this were true in the instant case, Garrett's activities in Pennsylvania, as discussed above, are not sufficient to exercise general personal jurisdiction over Acomarit.

B. Joint Venture

Plaintiff asserts that Osprey-Acomarit and Acomant entered a joint venture to disguise Acomarit's business affairs carried out by Garrett, its alleged Pennsylvania agent. (Pl.'s Second Supp. Resp. Def.'s Mot. Dismiss at 8). However, Plaintiff has not offered any proof of this alleged joint venture, and indeed the only agreement regarding Osprey-Acomarit's formation is between American Automar and Acomarit Holdings Limited of Bermuda. (Gibbs Dep. at 14-16, Def's Reply P1.'s Second Supp. Resp. Def.'s Mot. Dismiss, Ex. 2). Plaintiff has not offered any proof that Acomarit has engaged in any activity in Pennsylvania. All that he has demonstrated has been acknowledged by Acomarit: Garrett resided in Pennsylvania, where he received compensation and reimbursement for expenses; Garrett, while at his home, occasionally sent and received faxes, B-mails, and telephone calls regarding his

employment; and Garrett traveled to and from Pennsylvania to attend vessels out of state. (Def.'s Renewed Mot. Dismiss at 14). Plaintiffs bald assertion that Acomarit engaged in a scheme to destroy all of its records reflecting its activities in the United States is not supported by any evidence. Id. at 8-9. Plaintiff has had a full opportunity for discovery in which to attempt to prove such an allegation, but he has failed to present any evidence supporting this bare claim.

C. Vice Principal

Plaintiff claims that "[w]here a representative or one acting on behalf of a corporation has authority to direct, supervise, hire, and discharge subordinates, he becomes a vice principal of that corporation." Id. at 9-10. Plaintiff contends that Osprey-Acomarit, through Garrett, was a "vice principal" for Acomant and that Osprey-Acomarit's activities establish jurisdiction over Acomarit. Id. at 9. It appears that Plaintiff intends to use the term "agent" or "subagent." A "principal" authorizes an agent to act on his or her behalf and an agent may appoint a subagent to perform agency-related duties. RESTATEMENT (SECOND) OF AGENCY §§ 1, 5 (1958); BLACK'S LAW DICTIONARY 64, 65, 1210 (7th ed. 1999).

Regardless of the terminology, Plaintiff cites no evidence to support his allegation. Instead, he refers to a case, Prunty v. Arkansas Freightways, Inc., 16 F.3d 649 (5th Cir. 1994), for the proposition that the acts of a vice principal are jurisdictionally attributable to the principal corporation. Prunty, which involved alleged sexual harassment by a company supervisor, actually stands for the principle that an employer who ratifies or approves the intentional, malicious, or grossly negligent acts of an agent may be liable for compensatory and punitive damages. 16 F.3d at 652-53. Plaintiffs reliance on this case is inapposite.

D. Plaintiff's Allegation of Rule 4(k)(2) Jurisdiction

1. Proceedings in the Southern District of Texas

In his lawsuit in the Southern District of Texas, Plaintiff argued that Acomarit was amenable to that court's jurisdiction based on the Texas long-arm statute and pursuant to Fed. R. Civ. P. 4(k)(2).[6] After reviewing Plaintiffs allegations of Acomarit's contacts,[7] that court rejected Plaintiffs contentions:

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[6]Fed. R. Civ. P. 4(k)(2) provides:

If the exercise of jurisdiction is consistent with the Constitution and the laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

Professor Coyne explains the rule:

"The provision functions as a species of federal long arm statute by closing the loophole that existed when foreign defendants lacked single state contacts sufficient to bring them within the reach of a given state's long arm statute, but had enough contacts with the United States as a whole to make personal jurisdiction over them in a United States court constitutional. . . . A federal court may use this rule where a defendant contends that he or she cannot be sued in the forum state and refuses to identify any other state where suit against him or her is possible.

THOMAS A. COYNE, FEDERAL RULES OF CIVIL PROCEDURE 11-25 (2d ed. 2002) (citations omitted). See also Dora A. Corby, Comment, Putting Personal Jurisdiction Within Reach: Just What Has Rule 4(k)(2) Done for the Jurisdiction of Federal Courts? 30 MCGEORGE L. Rev. 167 (1998).

(continued.....[7])

[Plaintiff] points to the numerous economic relationships and contract between Acomarit and Texas and the litigation listed above as minimum contacts, demonstrating that Acomarit has engaged in purposeful activity in the United States and invoked the benefits and protections of its laws. He insists that Acomarit has continuous and systematic contacts with both the United States and Texas. He points to the three-factor test frequently used for sufficiency of minimum contacts for general jurisdiction to exercise personal jurisdiction under

Rule 4(k)(2): (1) transacting business in the United States; or (2) doing an act in the United States; or (3) having an effect in the United States by an action done elsewhere. Western Eciuities, Ltd. v. Hanseatic, Ltd., *956* F. Supp. 1232, 1237 (D.V.I. 1997), citing Eskofot A/S v. E.I. Du Pont De Nemours & Co., 872 F. Supp. 81, 87 (S.D.N.Y. *1995).* Saudi asserts that Acomarit has continuous and systematic contacts with the United States and with Texas and that therefore the Court can assert general personal jurisdiction over Acomarit under Rule 4(k)(2).

***

([7].....continued)

[7]Plaintiffs list of Acomarit's contacts included allegations that the Marine Atlantic, under Acomarit's management, was conducting its operations within the business and economic zone of the United States; that the support vessels for the Marine Atlantic were registered in the United States; that the company whose crude oil was stored on the Marine Atlantic hired a Texas company to provide lightering services for the Marine Atlantic; and that some of Acomarit's vessels had entered the United States to conduct business. Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d at 479, 483.

> Regarding his allegations that the vessel was located in the "water body of Texas" in an "exclusive business and economic zone" of the United States, Acomarit states that it has found no statute, regulation or federal or Texas case that uses these terms and charges that they are unfounded and lacking in any legal authority. The bottom line is that the Marine Atlantic was in international waters at the time of the incident, and thus the incident did not occur in Texas, in Texas waters, or within Texas' jurisdictional reach. This Court agrees that the terminology employed by Saudi fails to obfuscate the fact that the location of the accident was not in Texas or United States waters to create a nexus with the forum or generally with the United States.
>
> * * *
>
> [T]he Court agrees with Acomarit that the points [Plaintiff] argues do not constitute sufficient minimum contacts to Texas or to the United States [to] impose jurisdiction on Acomarit in the instant suit.[8]

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[8] In its ruling, the Southern District of Texas noted that Plaintiffs argument that Acomarit had sufficient contacts with both Texas and the United States to satisfy Rule 4(k)(2) jurisdiction contradicted his own authority that federal long-arm jurisdiction under Rule 4(k)(2) is not an option where the party's minimum contacts satisfy a state long-arm statute. Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d at 480 n.5. However, a plaintiff may allege alternative theories of jurisdiction and may introduce evidence of a defendant's contacts with one state to attempt to prove jurisdiction under that state's long-arm statute, and may also attempt to prove general contacts with many states in an effort to prove Rule 4(k)(2) nationwide jurisdiction is applicable. Rule 4(k)(2) does not preclude alternative theories, but does not allow

(continued.....[8])

Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d 469, 480 (S.D. Tex. 2001).

2. **Proceedings in the Eastern District of Pennsylvania**

([8].....continued)

the court to find both federal long-arm jurisdiction under Rule 4(k)(2) and jurisdiction under a state's long-arm statute. See Gary B. Born & Andrew N. Vollmer, The Effect of the Revised Federal Rules of Civil Procedure on Personal Jurisdiction, Service, and Discovery in International Cases, 150 F.R.D. 221, 226 (1993) ("[A] plaintiff will not have the benefit of the national contacts test unless it identifies all the states in which the defendant has some contacts, analyzes the long-arm statute of each of those states, researches the judicial decisions applying the statutes, and properly concludes that none of the statutes would permit the state to exercise personal jurisdiction over the defendant."). These

authors, although noting that the rule is designed to help plaintiffs, nonetheless note that if a plaintiff cannot identify a federal district court in a state with a long-arm statute that would reach the defendant:

> the clause seems destined to foment costly, time-consuming, superfluous, and distracting litigation about a defendant's amenability to jurisdiction in different states. In an anomalous turnabout, those disputes would involve plaintiffs arguing that defendants are not subject to jurisdiction under any state long-arm statute and defendants arguing that they are and that the litigation is in the wrong state.

Id. at 227. See also United States v. Offshore Marine Ltd., 179 F.R.D. 156, 157-59 (D.V.I. 1998) (holding that no basis existed for personal jurisdiction after reviewing the plaintiffs alleged contacts pursuant to the territory's long-arm statute and Rule 4(k)(2)).

Plaintiff alleged Rule 4(k)(2) jurisdiction for the first time in this Court in his objection to the magistrate judge's March 12, 2002 Order, which limited Plaintiffs discovery to Acomarit's alleged contacts with Pennsylvania from January 1, 1998 to the present. Plaintiff asserted that he should be "entitled to full discovery of all of Tom Garrett's (Acomarit' s agent's) nationwide activities since Saudi never had a full and fair opportunity to litigate nationwide jurisdiction over Defendant Acomarit under Rule 4(k)(2) [of the] Federal Rules of Civil Procedure." (Pl.'s Aff Obj. Magistrate's Order at 3). Plaintiff asserted that:

> The Magistrate's view is erroneous for two reasons. When Garrett, who lived in Pennsylvania the whole time he was "attending" Acomarit vessels, was dispatched from Pennsylvania by order of Defendant
>
> Garrett's actions took place "partly" in that state and constitute part performance of his employment contract therein. Additionally, when Defendant Acomarit contacted Garrett, by mail or by telephone, or by other means, while Garrett was located in that state, such acts "directed at" or "within" the State of Pennsylvania are relevant to jurisdiction.

Id.

On June 24, 2002, this Court denied Plaintiffs objections to the magistrate judge's Order.

Saudi v. Acomarit Services Maritimes, S.A., 2002 WL 1373077, at *2:

> Saudi appears to be intent upon reopening the issue of national jurisdiction previously resolved in the Texas litigation. An essential prerequisite to applying Rule 4(k)(2) is that a defendant is not

> subject to jurisdiction in any state. Base Metal Trading, Ltd.. v. OJSC, 283 F.3d 208, 215 (4th Cir. 1992). Saudi, however, now asserts that Acomarit is subject to personal jurisdiction and service in Pennsylvania. The Court ordered discovery to determine whether that contention was correct. If Saudi is correct, he can not satisfy an essential element of national jurisdiction and [the] Magistrate Judge properly limited discovery to Acomarit's Pennsylvania contacts.

Id. At * 1 Assuming that Plaintiff did not waive his Rule 4(k)(2) argument by failing to assert it prior to the magistrate judge's ruling, the discussion below will show that he has not been prejudiced by any restrictions on discovery.

a. Res JudicataiClaim Preclusion

Acomarit contends that the Texas court's determination that it did not have Rule 4(k)(2) jurisdiction serves as ~ judicata or claim preclusion to bar the relitigation of that claim in this case. (Def's Reply. Pl.'s Second Supp. Resp. Def.'s Renewed Mot. Dismiss at 6).

Plaintiff asserts that the holding of the court in the Southern District of Texas that it did not have Rule 4(k)(2) jurisdiction should not serve as ~ judicata in this Court because Plaintiff was denied the full and fair opportunity to litigate that claim "based on misrepresentations of the opposing party."[9] (Pl.'s Mem. Law. Obj. Magistrate's Order at 2).

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[9]Plaintiff characterizes as a misrepresentation Acomarit's assertion in its Motion to Dismiss in the Southern District of Texas action that it had no employees in the United States. (Pl.'s Aff. Obj. Magistrate's Order at 5). However, Plaintiff has never established that Torn Garrett was an employee of Acomarit.

(continued.....[9])

"Federal law of claim preclusion requires a defendant to demonstrate that there has been a (1) final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action." Merritt Logan, Inc. v. Fleming Foods of Pennsylvania, Inc., 138 B.R. 15, 23-24 (E.D. Pa. 1992) (quoting Lubrizol Corp. v. Exxon. Corp., 929 F.2d 960, 963 (3d Cir. 1991)). A dismissal of an action for lack of personal jurisdiction is not a dismissal on the merits. See Fed. R. Civ. P. 4 1(b) ("Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication on the merits.") (emphasis added); see also Compagnie des Bauxites de Guinee v. L'Union Atlanticiue S.A. d'Assurances, 723 F.2d 357, 360 (3d Cir. 1983). Therefore, Acomarit's dismissal for lack of personal jurisdiction in the Southern District of Texas is not res judicata on this Court.

b. Admission

Acomarit also asserts that Plaintiff, pursuant to Fed. R. Evid. 801(d)(2)[10], is bound by his judicial admission that

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([9].....continued)
Rather, Acornarit has characterized Garrett as a consultant providing services to a variety of ship operating groups and as an independent contractor. (Bille Aff. ¶ 5, Renewed Mot. Dismiss, Ex. 4; Hearing Tr. at 36).

[10]Fed. R. Evid. 801(d)(2) provides, in relevant part, that a statement is not hearsay if the "statement is offered against the party and is (A) the party's own statement, in either an individual or representative capacity. . . . The contents of the statement shall be considered. . . ."

Rule 4(k)(2) jurisdiction in the Southern District of Texas was proper because Acomarit had insufficient contacts with any state to warrant the exercise of personal jurisdiction. (Def's Renewed Mot. Dismiss at 17, 18).

"Judicial admissions are binding for the purpose of the case in which the admissions are made including appeals." Zapach v. Dismuke, 134 F. Supp. 2d 682, 693 (E.D. Pa. 2001) (quoting Glick v. White Motor Co., 458 F.2d 1287, 1291 (3d Cir. 1972)). What Acomarit characterizes as an admission was more of a contention in the Southern District of Texas and not in the instant case, and was rejected by that court. Even assuming Plaintiff made an admission in that case, it is not binding on him in this Court. Further, Acomarit's position is inconsistent with general rules of federal pleading, which allow alternative theories to be presented. See Fed. R. Civ. P. 8.

C. Legal Discussion Regarding Rule 4(k)(2)

In Western Equities, Ltd. v. Hanseatic, Ltd., *956* F. Supp. 1232, 1237 (D.V.I. 1997), cited in the Southern District of Texas opinion granting Acomarit's motion to dismiss, Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d at 480, 483, the District Court for the District of the Virgin Islands, adopted the Second Circuit's test for the sufficiency of minimum contacts for the exercise of personal jurisdiction under Rule 4(k)(2), which requires that (1) the defendant transact business in the United States, or (2) do an act in the United States; or (3) have an effect in the United States by an act done elsewhere. In Western Equities, the plaintiff, a Channel Islands corporation which. owned a British-registered yacht used for charters, sued the defendants, another Channel Islands corporation, and its British-registered yacht, which allegedly crashed into the plaintiffs

yacht in Antigua, West Indies, causing hull damage and lost charter revenue. 956 F. Supp. at 1233-34. The defendant filed a motion to dismiss for lack of personal jurisdiction, and the plaintiff asserted that jurisdiction was proper under Rule 4(k)(2). Id. at 1234. The parties agreed that the defendants were not subject to the jurisdiction of any state court of general jurisdiction in the United States, and the defendants asserted that they did not systematically conduct business in the United States. Id. To support its allegation of Rule 4(k)(2) jurisdiction, the plaintiff cited numerous visits by the defendant yacht to American ports; the defendants' attempts to sell the yacht through a broker in the United States; the defendants' advertising charter services in magazines circulated in the United States; and the defendants' solicitation of yacht brokers in the United States to arrange charters. Id. at 1236-3 7. The court reviewed these alleged contacts and found that they were not sufficient minimum contacts to exercise Rule 4(k)(2) jurisdiction because: (1) there was no evidence to show that the defendants had transacted business in the United States; (2) the alleged accident occurred in Antigua, West Indies; and (3) there was no allegation that the actions giving rise to the lawsuit would have any effect in the United States. Id. at 1237-38. "[E]ven if some effect could be found, it would hardly be foreseeable that the defendants should expect to answer for such effect in the courts of the United States. See, e.g., SEC v. Unifund SAL, 910 F.2d 1028, 1033 (2d Cir. 1990)." Id. at 1238. Therefore, the court granted the defendants' motion to dismiss for lack of personal jurisdiction. Id. at 1239.

In BP Chemicals, 259 F.3d at 258, discussed supra Part III.B., the Third Circuit reversed the district court's ruling that the foreign defendant corporation had sufficient contacts with the United States as a whole to justify the exercise of Rule 4(k)(2) jurisdiction. The Court found that although the defendant Taiwanese corporation exported its

products to the United States, held an ownership interest in a Delaware corporation, and entered into contracts requiring its personnel to travel to the United States for training, that the cumulative effects of these contacts did not meet the requirements for general personal jurisdiction under Rule 4(k)(2). Id. at 258, 262-63.

This Court concludes that the Southern District of Texas court's holding that Rule 4(k)(2) jurisdiction is not proper because the "location of the accident was not in Texas or United States waters to create a nexus with the forum or generally with the United States[,]" Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d at 480, is correct, and follows that holding.[11] Further, it is consistent with the holdings in Western Equities and BP Chemicals. Thus, even if the magistrate judge and the ruling on objections was too strict in the prior discovery rulings in this case, no amount of discovery on the activities of Acomarit generally, or Mr. Garrett, would be relevant. Jurisdiction under Rule 4(k)(2) is not available where the accident took place outside the United States, and had no effect inside the United States.

V. Motion to Compel

Plaintiff filed a Motion to Compel on December 5, 2002, specifically seeking responses to Interrogatory Nos. 3, 5, 6, 14, and 16 and Requests for Production Nos. 3-9, 14, 15, 17, 24b, 25, 27, and 28. (Pl.'s Mot. Compel at 2, 7).

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[11]The court also wrote:

Finally, for jurisdiction under Rule 4(k)(2), Acomarit asserts that Saudi's "laundry list" of "contacts" fails to satisfy due process requirements. Acomarit notes that the analysis in Western Equities of the insufficiencies of Hanseatic Ltd.'s United States' contacts, shows they far exceed those imputed to Acomarit by Saudi. 956 F. Supp. at 1236-37.

Saudi v. S/T Marine Atlantic, 159 F. Supp. 2d at 483.

Acomarit responded to Plaintiffs Motion to Compel on December 17, 2002. In its response, Acomarit addressed each of Plaintiffs contentions. (Def.'s Resp. Pl.'s Mot. Compel at 3-13). With respect to Plaintiffs request for responses to Interrogatory Nos. 3, 5, 6, 14, and 16, Acomarit correctly noted that those requests exceed the scope of the Court's October 18, 2002 Order, which permitted Plaintiff to file one Motion to Compel the Production of Documents limited to Acomarit's jurisdictional contacts with the Pennsylvania from January 1, 1998 to May 17, 1999. Id. Ex. 2. However, Acomarit noted that it has previously responded to these interrogatories. Id. at 4.

Regarding Plaintiffs specific requests for documents, Acomarit noted that it has responded to all such requests and provided all of its responsive documents to Plaintiff. Id. at 5-13; Exs. 2-4. Where such documents were in its possession and within the scope of the Court's Order, Acomarit represents it has provided such documents. Id In all other cases, it has answered such questions "none." Id. Hearing Tr. at 44.

Despite his insistence that Acomarit has not produced documents in its possession, Plaintiff has not produced any evidence to prove that Acomarit is withholding documents. The Court concludes that on the record of the case, Acomarit has complied with Plaintiffs discovery requests and produced documents responsive to those requests. Therefore, Plaintiffs' Motion to Compel will be denied.

VI. Conclusion

For the reasons discussed above, Defendant Acomarit's Renewed Motion to Dismiss for Lack of Personal Jurisdiction will be granted.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	:	CIVIL ACTION
Plaintiff	:	
v.	:	
ACOMARIT MARITIMES SERVICES, S.A.	:	NO.01-4301
Defendant.	:	

ORDER

AND NOW, this 31st day of January, 2003, upon consideration of Defendant's Renewed Motion to Dismiss For Lack of Personal Jurisdiction (Doc. No. 31), and all responses and replies thereto, it is hereby ORDERED that:

1 Defendant's Motion is GRANTED without prejudice.

2. Plaintiffs Motion to Compel (Doc. No. 62) is DENIED.

BY THE COURT

_____

MICHAEL M. BAYLSON, U.S.D.J.

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
AT PHILADELPHIA, PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
	§	
Plaintiff,	§	NO.01- 4301
	§	
	§	
ACOMARIT SERVICES	§	
MARITIMES, S.A.,ETAL,	§	
	§	
Defendants.	§	

MOTION TO COMPEL ANSWERS TO PLAINTIFF'S FIRST SET OF ADMISSIONS, FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS AND PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO THE HONORABLE UNITED STATES DISTRICT JUDGE OF SAID COURT:

COMES NOW, Captain Sheriff Saudi. in Propria Persona, and moves this Court for the entry of an Order compelling the Defendant. Acomarit Services Maritimes, S.A. to fully and completely respond to and answer all of the admissions contained in Plaintiff Saudi's First Set of Admissions, all Interrogatories contained in Plaintiff Saudi's First Set of Written Interrogatories, and to fully respond to and produce all documents requested by Plaintiff Saudi 's First Request for Production of Documents. In support of his Motion, Plaintiff Saudi would show the Court the following:

1. More than thirty (30) days prior to the filing of this Motion, Defendant Acomarit Services Maritimes, S.A. received service from the Plaintiff, a copy of the First

Set of Admissions containing eighty-one (81) admissions, a First Set of Request for Production of Documents containing thirty-seven (37) document requests and a First Set of Written Interrogatories containing thirty-three (33) written interrogatories.

2. On the January 21, 2002, counsel for Acomarit Services Maritimes, S.A., Carl D. Buchholz, III, Esquire, served objections to all of the above listed discovery requests. True and correct copies of the three (3) objections are attached hereto as Exhibits A, B, and C, and are incorporated herein by reference.

3. Defendant Acomarit Services Maritimes, S.A., through its counsel, refused to provide Plaintiff Saudi with any discovery at all claiming: a) Defendant has a Motion to Dismiss based on improper service and lack of personal jurisdiction pending before the Court, b) Plaintiff's Motion to Remand is presently pending before the Court, c) any discovery is premature until the above Motions have been decided, d) discovery is improper, because the parties have not filed the initial disclosures required by Rule 26 of the Federal Rules of Civil Procedure.

All of Defendant Acomarit's objections are without merit. The Court will recall that Acomarit has complained previously in filings before this court that Plaintiff should not be granted an enlargement of time for discovery, because "in light of the discovery provided in the Houston case in the United States District Court of the Southern District of Texas Houston Division in which Acomarit was a Defendant, no further discovery was necessary". Acomarit obviously made this assertion concerning Rule 26 to this Court in bad faith since disclosures under Rule 26 in the Federal Rules of Civil Procedure are the discovery that Acomarit claims is "unnecessary" with respect to Plaintiff's Motion for Enlargement of Time which this Court is still considering.

Further Plaintiff would show the Court that he has provided copies of requested records in this case fitting the description of what information should be turned over in an initial disclosure under Rule 26 of the Federal Rules of Civil Procedure to Mr. Buchholz. Mr. Buchholz has represented that if he needed any further documents which he could not obtain from Houston counsel (Messrs. Nork and Letourneau who are appearing in this Court pro hace vice) he would request same from the Plaintiff. Further, Defendant has not made any initial Rule 26 disclosures. Thus Defendant, itself, is in violation of Rule 26.

MEMORANDUM OF LAW

As support for his position that the discovery should be compelled in this case, Plaintiff Saudi cites VSPE Contracting Co. vs. Anvan Corp., 433 F.Supp. 1226, 1233 (E.D. Penn. 1977) which in turn cites numerous other authorities. "The facts necessary to conclusively establish whether acts of Defendants are sufficient to bring them within long-arm jurisdiction of a Federal District Court are within particular knowledge of Defendants, and it is error to dismiss the complaint for lack of in personam jurisdiction before Plaintiff has been given adequate opportunity to obtain information through discovery". Citing Third Circuit authority Mortenson v. First Federal Savings Ass'n. 549 F.2d 884, 890-896 (3d Cir. 1977). Acomarit invites this Court to commit error by claiming that the issue of personal jurisdiction should be decided without discovery.

Plaintiff has attached copies of his Admissions, Interrogatories and Requests for Production to this Motion as Exhibits D, E and F. A review of this requested discovery by this Court will establish the relevance of all discovery sought to the issue of jurisdiction.

Wherefore, Saudi moves this Court for the entry of an order compelling Defendant Acomarit to fully and completely answer all of the outstanding interrogatories, admissions and requests for production of documents that he has directed to Acomarit. Saudi prays for general relief.

Respectfully submitted,

Captain Sheriff Saudi
Plaintiff In Propria Persona
5222 Spruce Street
Bellaire, Texas 77401
(713) 668-8815
(713)668-9402--Facsimile

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copying of the foregoing pleading has been served by U.S. Mail and/or facsimile transmission on Carl D. Buchholz, III (215) 563-2583, Thomas Nork & Keith Letourneau (713) 871-8844, attorneys of record for defendant Acomarit Services Maritimes, S.A. on the 13th day of February 2002.

Sheriff Saudi

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI, Plaintiff,	§	
v.	§	Civil Action No. 01-0501475
ACOMARIT MARITIMES SERVICES, S.A., Defendant.	§	

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

To: Plaintiff Captain Sheriff Saudi, c/o Izen & Associates, P.C., 5222 Spruce Street, Bellaire, TX 77401

COMES NOW Defendant Acomarit Services Maritimes S.A., now known as V Ships Switzerland S.A. ("Defendant") and serves the following objections and answers to Plaintiff's First Set of Interrogatories.

Respectfully submitted,

Carl D. Buchholz, III.
1339 Chestnut Street
Philadelphia, PA 19107
215-575-4200
FAX 215-563-2583

Of Counsel:

Rawle & Henderson
Thomas R. Nork (TBA No. 15078500)
Keith B. Letourneau (TBA No. 00795893)
Bell, Ryniker, Letourneau & Nork
San Felipe Plaza, 5847 San Felipe, Suite 4600
Houston, Texas 77057
713-871-8822; Fax 713-871-8844

GENERAL OBJECTIONS: Defendant has on file before the Court a motion to dismiss for lack of personal jurisdiction. The answers set forth herein are made subject to that motion and Defendant's special appearance in this action. Defendant objects to each of the interrogatories below that seeks the discovery of information not permitted by the Federal Rules of Civil Procedure. Specifically, Fed. R. Civ. P. 26(b) provides that the scope of discovery is limited to "any matter, not privileged, that is relevant to the claim or defense of any party... ." Numerous interrogatories set forth below are not relevant to the claims of Plaintiff Sheriff Saudi ("Saudi") against Defendant, nor to the defenses of Defendant to Saudi's claims. Defendant also objects to the extent Saudi seeks information relating to other entities, companies, or parties in other civil lawsuits; such requests are not relevant to the claims asserted by Saudi against Defendant nor the defenses of Defendant to Saudi's claims. Defendant also objects to each interrogatory that seeks multiple answers in a single request. Defendant also generally objects to each interrogatory below that seeks information that is as readily available to Plaintiff as to Defendant. Defendant also objects to the number of interrogatories propounded herein as patently burdensome, harassing and exceeding the scope of permissible discovery under the Federal Rules. Defendant also objects to these interrogatories to the extent they were prepared in whole or in part by Saudi's Houston counsel, who are not admitted to practice in the Pennsylvania action. Defendant also objects to each interrogatory that seeks information concerning matters that predate Defendant's involvement with the vessel MARINE ATLANTIC. Defendant is without personal knowledge to address any such matters. Defendant objects to each interrogatory that employs the term "and/or" because such phrase necessarily is ambiguous and asks multiple or alternative questions in a single request. Defendant also objects to these interrogatories because they were served in

violation of the Federal Rules of Civil Procedure. Defendant also objects to each interrogatory that seeks the production of privileged information, including information protected by the attorney-client privilege and attorney work-product doctrine. Defendant also objects to each characterization of Tom Garrett as Defendant's port captain.

ANSWERS TO INTERROGATORIES

1. Please state the name, present address, present telephone number, title, job description, of all person who assisted in the preparation of the answers to these interrogatories.

Answer: Subject to and without waiving the General Objections above and any other objections herein, these interrogatory answers are verified by Captain Jacques Bille, based upon information gathered from various sources, including company records and discovery conducted in the Houston case. These responses constitute corporate responses and, as such, are not based solely on the personal knowledge of a particular person. Additionally, counsel for the Defendant assisted in the preparation of these answers.

2. Please list and describe the name, present address, title, job description, function and corporate position of all corporate directors, officers, employees, or agents who supervised or monitored Tom Garrett's performance of his "duties" as Port Captain for Acomarit stating also the dates, times, and nature of such supervision or monitoring from 1995 to the present date.

Answer: Subject to and without waiving the General

Objections above and any other objections herein, Defendant objects to this interrogatory's characterization of Tom Garrett as port captain for Defendant. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. No Defendant's employee supervised or monitored the details of Tom Garrett's work. He worked as an independent contractor.

3. Please give the name, present address, present telephone number, job description, title, and position of all person or entities who were or are custodian of records of Acomarit from 1995 to the present date stating also, the specific addresses and locations where such records were compiled and stored, as well as their present whereabouts.

Answer: Subject to and without waiving the General Objections above and any other objections herein, Defendant corporate records are stored at its offices in Geneva, Switzerland. Defendant's records custodian is _____.

4. Please state and describe in complete detail Acomarit Services Maritimes, S.A.'s complete ownership interest, control or involvement In Monte Cristo Ship Holdings, Ltd., and/or any corporation or other entity formed under the laws of Bermuda.

Answer: Defendant objects to this interrogatory as exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, none.

5. Please list and describe, and set out in complete

detail, all dates and times when Acomarit owned or managed vessels docked in ports in the United States from 1995 to the present date, and set out the names, present addresses and present telephone numbers of all Acomarit agents, employees, or independent contractors who attended such vessels while there were in U.S. ports, or in the exclusive economic zone of the United States of America.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of *res judicata* and *collateral estoppel.* This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

6. Please list, describe, state, and set out specifically, the exact amount of payments for labor and cost reimbursement which were made to either Tom Garrett or to Osprey-Acomarit in relation to Tom Garrett's performance of his duties as Acomarit's Port Captain from 1995 to the present date.

Answer: Defendant objects to this interrogatory's characterization of Tom Garrett as port captain for Defendant. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. Defendant did not assume its management role for the vessel until January 1996. Thus, this

interrogatory also seeks information that predates Defendant's involvement with the vessel MARINE ATLANTIC. Defendant also objects to this interrogatory as harassing, and exceeding the permissible scope of discovery in this case. The federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules, and is patently unduly burdensome because it seeks the production of documents over a six year period. Subject to and without waiving the General Objections above and any other objections herein, see Tom Garrett's deposition and documents produced in the Houston action. Defendant is reviewing its records in Switzerland and will supplement as necessary.

7. Please list and describe what caption, style, and case number of all lawsuits filed by any parties in the Courts of the United States, (whether Federal or State) against Acomarit Services Maritimes, S.A. in which Acomarit Services Maritimes, S.A. raised the defense of lack of personal jurisdiction from 1993 to the present date, and state the result, or final disposition of each such case or matter.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections

herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

8. Please list and describe the location and type of all property owned by Acomarit, located in the United States, (including both real and personal property) from 1993 to the present indicating the date and manner of disposition of such property, if any, and the use to which such property was put by Acomarit.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Defendant has already addressed property issues relating to Pennsylvania in its Motion to Dismiss.

9. Please list and describe all telephone numbers, telex numbers and email addresses utilized by Acomarit for communications for any purpose from 1993 to the present date, also stating specifically the periods

of time when such telephone numbers, telex numbers and email addresses were in operation during this period of time.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has rules that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

10. Please list and describe all telephone numbers, telex numbers and email addresses utilized by Tom Garrett for communications for any purpose from 1993 to the present date, also stating specifically the periods of time when such telephone numbers, telex numbers and email addresses were in operation during this period of time.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, this information is beyond Defendant's knowledge. Plaintiff deposed Tom Garrett for more than eight hours in the Houston case and had the opportunity to ask Mr. Garrett for the information requested in Interrogatory No. 10.

11. Please list and describe all telephone numbers, telex numbers and email addresses utilized by Osprey-Acomarit for communications for any purpose from 1993 to the present date, also stating specifically the periods of time when such telephone numbers, telex numbers and email addresses were in operation during this period of time.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. Subject to and without waiving the General Objections above and any other objections herein, this information is beyond Defendant's knowledge. Plaintiff deposed William Gibbs of Osprey Ship Management in the Houston case and had the opportunity to ask Mr. Gibbs for the information requested in Interrogatory No. 11.

12. Please list and describe in complete detail the names, present addresses, present telephone numbers (or as current as possible) of all shareholders of Acomarit, setting out the number of shares owned by each shareholder from 1993 to the present date.

Answer: Defendant objects to this interrogatory as unduly burdensome and harassing. Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible scope of discovery in this case.

13. Please list and describe all powers which Tom Garrett was delegated by Acomarit when he became Acomarit's Port Captain, and indicate with respect to each such power whether Torn Garrett actually exercised such power on behalf of Acomarit while he

was acting as Acomarit's Port Captain.

Answer: Subject to and without waiving the General Objections above and any other objections herein, Defendant objects to this interrogatory's characterization of Tom Garrett as port captain for Defendant. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. Mr. Garrett was hired as an independent contractor to perform various services, all of which he described at his eight hour deposition, which Plaintiff took in the Houston case.

14. Please list and describe by title, name, present address and present telephone number all persons or entities to which Tom Garrett reported when he attended the S/T Marine Atlantic, and any Acomarit owned and/or managed vessels, in the Gulf of Mexico, and any and all other U.S. ports and/or territorial waters and indicate the nature and content of such reports and/or discussions between Tom Garrett and Acomarit personnel.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. The federal district court for the Southern District of Texas has rules that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General Objections above and any other objections

herein, Mr. Garrett testified at his eight hour deposition concerning the nature of services rendered. Plaintiff had the opportunity at that time to inquire of Mr. Garrett to whom he spoke and reported.

15. Please identify and list the names, current addresses and current telephone numbers of all witnesses having knowledge of relevant facts concerning the claims or causes of action described in Plaintiff's Complaint, and state whether or not, with respect to each such witness, such witness has provided a written statement.

Answer: Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures, answers to Plaintiff's first set of interrogatories, responses to requests for production of documents and the discovery responses of Koch Shipping and Marine Transport Lines in the Houston action, all of which have previously been produced to Plaintiff, as well as correspondence from Defendant's counsel to Plaintiff's counsel concerning the availability of vessel crewmembers and expert witnesses for deposition, which depositions Plaintiff declined to take.

16. Please list the name, current addresses, and current telephone numbers of all expert witness who may testify on behalf of Defendant Acomarit at any trial of this case and include a description of the credentials of such expert witness(es) and a short summary of the opinions or conclusions held by such expert witness(es).

Answer: Subject to and without waiving the General Objections above and any other objections herein, see expert designations and reports produced by Defendants in the Houston action, which also serves as Defendant's expert designations and reports in the Pennsylvania case.

17. Please list and describe the content of all written correspondence, between the Defendant and any individual, company, corporation, government entity, government bureau, and/or any other entity or individual concerning the vessel "S/T Marine Atlantic' and the port and starboard hose handling cranes in question on the vessel on May 17. 1999, including, but not limited to, the manufacturer, designer, owner, installer, inspector, and company responsible for maintenance of the port and starboard hose handling cranes, U.S. Coast Guard and your own Surveyor who inspected the cranes after the incident, identifying the parties thereto, the recipients of such correspondence and the general content of the written correspondence from the date of installation on the vessel "S/T Marine Atlantic" to the present.

Answer: Subject to and without waiving the General Objections above and any other objections herein, see documents produced by Defendant in the Houston action, including Defendant's initial discovery disclosures, B, 3, 4, 5, 9 and 10 (survey report), Bates Nos. Acomarit 00001-00132; 00145-00147; 00149-00177; 00180; 00183-00184; 00186; 00189-00192; 00199-00201; and 00216-00223. See also documents

accompanying expert reports produced in the Houston action, as well as the discovery responses of defendants Koch Shipping and Marine Transport Line in the Houston action.

18. Please describe in complete detail who holds the current certificate of financial responsibility on the vessel "S/T Marine Atlantic" (Name, address, and telephone number) and the current policy of insurance that covers all liability, injury, fire and Acts of God for the above named vessel (including the company's name, its agent's name, its address and telephone number).

Answer: Subject to and without waiving the General Objections above and any other objections herein, Defendant believes that the certificate of financial responsibility is held by the United States Coast Guard. See also the following documents produced in the Houston case, Bates Nos. Acomarit 00386-00392.

19. Please describe in complete detail any and all accidents, Workmen's Compensation injuries and/or violations involving OSHA in which the vessel "S/T Marine Atlantic" has been involved for the past ten (10) years.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible scope of discovery and does not seek information relevant to the claim or defense of any party. To the extent an answer is required, Defendant began management of the MARINE ATLANTIC on or about January 29, 1996; since that date, none.

20. Please describe in complete detail any and all accidents and/or incidents of failures of the portside or starboard hose handling cranes, Workmen's Compensation injuries and violations involving OSHA in which either the portside or starboard hose handling cranes of the vessel S/T Marine Atlantic" have been involved for the past ten (10) years.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible scope of discovery and does not seek information relevant to the claim or defense of any party. To the extent an answer is required, Defendant began management of the MARINE ATLANTIC on or about January 29, 1996; since that date, none.

21. Please describe in complete detail any contract or agreements which Defendant Acomarit presently has or has had with any U.S. individual, and/or entity, company, and/or corporation since the date that the portside hose handling crane was installed on the vessel "S/T Marine Atlantic" through the present.

Answer: Defendant objects to this interrogatory as unduly burdensome, harassing, and exceeding the permissible scope of discovery in this case. The federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

Subject to and without waiving the General Objections above and any other objections herein, see documents previously produced in the Houston action, and the depositions of Koch Shipping's corporate representative, and Robert Hamshaw taken in the Houston action.

22. Please describe in complete detail the manufacturer's recommended maintenance schedule and requirements for the portside hose handling crane in question, and the maintenance and repair schedule that was followed from the period that the portside hose handling crane was installed on the vessel "S/T Marine Atlantic" through the present.

Answer: Defendant objects to this interrogatory on grounds that it is overly broad, burdensome, vague, ambiguous and harassing. Subject to and without waiving the General Objections above and any other objections herein, Defendant refers Plaintiff to the following manuals and records that were produced in the Houston action, Bates Nos. Acomarit 00225, 00228-00238 and 00239-00294. See also the deposition transcripts of witnesses in the Houston action, including Tom Garrett and Richard Farman, and the trial testimony of Richard Farman in the Houston action.

23. Please describe in complete detail all engineer's logs, ship's logs, and any and all other logs, diaries and documents of any kind, that reflect the maintenance performed on the portside hose handling crane in question from the time that the portside hose handling crane was installed on the vessel "S/T Marine Atlantic" through the present.

Answer: Defendant objects to this interrogatory on grounds that it is overly broad, burdensome and requests information predating Defendant's management of the vessel. Subject to and without waiving the General Objections above and any other objections herein, see answer to interrogatory No. 22 above.

24. Please describe in full detail all written documents from anyone who expressed an opinion, certified, and/or swore to the condition of the vessel "S/T Marine Atlantic" and of either, or both the portside and/or starboard hose handling cranes aboard the vessel on May 17, 1999, from the time the cranes were installed on the vessel through the present.

Answer: Defendant objects to this interrogatory on grounds that it is overly broad, burdensome, vague, ambiguous, not likely to lead to the discovery of relevant information, and requests information predating Defendant's management of the vessel. Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial disclosures in the Houston action, B, 3, 4 and 5. See also the expert reports and accompanying documents produced in the Houston action, which have previously been produced to Plaintiff.

25. Please describe in detail all tests, inspections, and surveys performed on the portside and starboard hose handling cranes on the vessel "S/T Marine Atlantic" from the date of their installation through the present, the date of each test, inspection and survey and the

name(s), address(es) and telephone numbers(s) of the individual(s) and company(ies) that performed the test(s) and inspection(s).

Answer: Defendant objects to this interrogatory on grounds that it is overly broad, burdensome, vague, ambiguous, not likely to lead to the discovery of relevant information, and requests information predating Defendant's management of the vessel. Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures in the Houston action, B, 3, 4 and 5. See also Bates Nos Acomarit 00295-00299, as well as the deposition transcripts of Tom Garrett and Richard Farman, and the trial testimony of Richard Farman in the Houston action.

26. Please describe in detail all maintenance performed on the portside and starboard hose handling cranes on the vessel "S/T Marine Atlantic" from the date of their installation through the present, the date of the maintenance and repairs performed, a detailed description of the maintenance and repairs performed and the name(s), address(es) and telephone number(s) of the individual(s) and company(ies) that did the maintenance and repairs for the period from the date of installation of the cranes on the vessel through the present.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

27. Please describe in detail all correspondence between Defendant Acomarit and the Owner(s) of the vessel "S/T Marine Atlantic", and describe any and all authorizations from the Owner(s) to Acomarit for maintenance and repair of the portside hose handling crane for the period form the date of the installation of the crane on the vessel through the present.

Answer: Subject to and without waiving the General Objections above, and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

28. Please describe in complete detail all lawsuits to which Defendant Acomarit has been a party in the past ten (10) years.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

29. Please provide in detail the names, addresses, and telephone numbers of the crew aboard the vessel *"S/T* Marine Atlantic" for the period from December 1, 1998 through December 31, 1998; including, but not limited to (1) the Master; (2) the Chief Officer; (3) the Chief Engineer; (4) the Engineer; (5) the Boatswain; (6) the crane operator(s), and any and all other individual(s) who were members of the crew during the above designated period.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible

number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

30. Please provide in detail the names, addresses, and telephone numbers of the crew aboard the vessel "S/T Marine Atlantic" on May 17, 1999, including, but not limited to (1) the Master; (2) the Chief Officer; (3) the Chief Engineer; (4) the Engineer; (5) the Boatswain; (6) the crane operator(s), and any and all other individual(s) who were members of the crew during the above designated period.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

31. Please proved the name(s), addresses and telephone numbers of the individual, or individuals, who conducted the test in December, 1998 of the portside hose handling crane on board the vessel "S/T Marine Atlantic" and the name(s), addresses and telephone numbers of any individual(s) who witnessed the testing of the crane, and the company and the name, address, and telephone number of the individual(s) who authorized that company or individual to perform the test.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

32. Please provide the name(s), addresses and telephone numbers of the individual, or individuals, who

conducted the most recent inspection of the vessel "S/T Marine Atlantic's" portside and starboard hose handling cranes and the company and the name, address and telephone number of the individual(s) who authorized that company or individual to perform the inspection.

Answer: Subject to and without waiving the General Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

33. Please provide the name of the company that Defendant Acomarit sent to the vessel "S/T Marine Atlantic" on or after May 17, 1999, immediately after the failure of the portside hose handling crane to perform a survey of both hose handling cranes, and the name of the surveyor who actually performed the survey and his address and phone number.

Answer: Subject to and without waiving the Genera! Objections above and any other objections herein, this interrogatory exceeds the permissible number of interrogatories that a party may serve under the Federal Rules of Civil Procedure.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
AT PHILADELPHIA, PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
	§	
Plaintiff,	§	NO.01- 4301
	§	
	§	
ACOMARIT SERVICES	§	
MARITIMES, S.A.,ETAL,	§	
	§	
Defendants.	§	

ORDER

On this day came on to be considered Plaintiff's Motion To Compel Answers To Plaintiffs First Set Of Admissions, First Set Of Requests For Production Of Documents and First Set Of Interrogatories propounded to Defendant Acomarit Services Maritimes, S.A., and the Court, after review of the pleadings on file, is of the opinion that said Motion SHOULD *I* SHOULD NOT BE GRANTED. It is therefore,

ORDERED that Plaintiffs Motion to Compel Answers To Plaintiffs First Set Of Admissions, First Set Of Requests For Production Of Documents and First Set Of Interrogatories is GRANTED, and it is further ORDERED that Defendant shall answer all discovery propounded to it by _____,2002.

_____
U.S. DISTRICT COURT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,

v. Civil Action No. 01-0501475

ACOMARIT MARITIMES SERVICES, S. A.,

VERIFICATION

COMES NOW, Captain Jacques Bille and states, under penalty or perjury under the laws of the United States of America, that he is the General Manager of V Ships Switzerland, SA, formerly known as Acomarit Services Maritimes, S. A., Defendant in this suit; that he has read the above Answers to Plaintiff's First Set of Interrogatories; and that the statements contained therein are true and correct to the best of his knowledge and belief.

_____

Captain Jacques Bille

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
Plaintiff,	§	
v.	§	Civil Action No.
	§	01-0501475
ACOMARIT MARITIMES	§	
SERVICES, S.A.,	§	
Defendant.	§	

ANSWERS TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR ADMISSIONS

To: Plaintiff Captain Sheriff Saudi, c/o Izen & Associates, P.C., 5222 Spruce Street, Bellaire, TX 77401

COMES NOW Defendant Acomarit Services Maritimes S.A., now known as V Ships Switzerland S.A. ("Defendant") and serves the following objections and answers to Plaintiff's First Set of Requests for Admissions.

Respectfully submitted,

Carl D. Buchholz, III.
1339 Chestnut Street
Philadelphia, PA 19107
215-575-4200
FAX 215-563-2583

Of Counsel:

Rawle & Henderson
Thomas R. Nork (TBA No. 15078500)
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713-871-8822; Fax 713-871-8844

GENERAL OBJECTIONS: Defendant has on file before the Court a motion to dismiss for lack of personal jurisdiction. The answers set forth herein are made subject to that motion and Defendant's special appearance in this action. Defendant objects to each of the requests for admission below that seeks the discovery of information not permitted by the Federal Rules of Civil Procedure. Specifically, Fed. R. Civ. P. 26(b) provides that the scope of discovery is limited to "any matter, not privileged, that is relevant to the claim or defense of any party. Numerous requests set forth below are not relevant to the claims of Plaintiff Sheriff Saudi ("Saudi") against Defendant, nor to the defenses of Defendant to Saudi's claims. Defendant also objects to the extent Saudi seeks admissions regarding information relating to other entities, companies, or parties in other civil lawsuits; such requests are not relevant to the claims asserted by Saudi against Defendant nor the defenses of Defendant to Saudi's claims. Defendant also objects to each request for admission that seeks multiple answers in a single request. Defendant also generally objects to each request below that seeks information that is as readily available to Plaintiff as to Defendant. Defendant also objects to the number of requests propounded herein as patently burdensome and harassing. Defendant also objects to these requests to the extent they were prepared in whole or in part by Saudi's Houston counsel, who are not admitted to practice in the Pennsylvania action. Defendant also objects to each request that seeks an admission concerning matters that predate Defendant's involvement with the vessel MARINE ATLANTIC. Defendant is without persona! knowledge to address any such matters. Defendant objects to each request that employs the term "and/or" because such phrase necessarily is ambiguous and asks multiple or alternative questions in a single request. Defendant also objects to these requests for admissions because they were served in violation of the Federal Rules of Civil Procedure. Defendant also objects to each request for admission that seeks the production of

privileged information, including information protected by the attorney-client privilege and attorney work-product doctrine. Defendant also objects to each characterization of Tom Garrett as Defendant's port captain.

1. The S/T Marine Atlantic was built and constructed in the shipyard in Newport News, Virginia in 1979.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

2. The portside hose handling crane was originally installed on the S/T Marine Atlantic when the vessel was built in 1979 was manufactured by a company named Appleton Marine which was located in Appleton, Wisconsin.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

2a. The original portside hose handling crane originally installed on the S/T Marine Atlantic in 1979 was the crane that failed on May 17, 1999.

Response: Subject to and without waiving the Genera! Objections above and any other objections herein, admitted.

3. Shell was the first owner of the vessel after the completion of the manufacture of the vessel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

4. Shell, the owner/operator of the vessel S/T Marine Atlantic operated the vessel for about three (3) years and then ceased the vessel's operation, and "laid it" at anchor in the Bay of Borneo.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

5. In 1994, U.S. Trust Company of New York held a mortgage on the vessel S/T Marine Atlantic.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

6. In 1994, U.S. Trust Company of New York held a lien on the vessel S/T Marine Atlantic.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

7. The vessel S/T Marine Atlantic was placed at anchor in the Bay of Borneo where it remained for approximately 13 years.

Response: Subject to and without waiving the Genera! Objections above and any other objections herein, denied.

8. During the period of time that the S/T Marine Atlantic remained anchored in the Bay of Borneo Indonesia, the vessel, and its appurtenances mounted on its deck, were exposed to seawater spray which coated any metallic, or non-metallic surface on the vessel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

9. In 1994, Richard Farman, an engineer for a company known as Marine Transport Lines, Inc., went aboard the vessel UST Atlantic (presently S/T Marine Atlantic) where it was anchored in the Bay of Borneo for the purpose of making an assessment of whether the vessel could be reactivated for new owners.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

10. Richard Farman worked for a company known as Marine Transport Lines, Inc. at that time.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

11. Marine Transport Lines, Inc. and/or one of its affiliates or subsidiaries, the company for which Richard Farman worked as an engineer, was retained by a company known as Marine Atlantic, Ltd. to make the assessment.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

12. After making the assessment, Richard Farman reported to Marine Transport Lines, Inc. and MTL reported to Marine Atlantic, Ltd., that the vessel could be activated.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

13. Thereafter, Marine Atlantic, Ltd. retained the services of Marine Transport Lines, Inc. and/or one of its affiliates or subsidiaries, to carry out and oversee the reactivation of the vessel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

14. Marine Transport Lines, Inc. then oversaw the transport of the vessel to the Keppel Shipyard in the Republic of Singapore.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

14a. MTL International Ship Management, Inc. then oversaw the transport of the vessel to Keppel Shipyard in the Republic of Singapore.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

15. Marine Transport Lines, Inc. supervised the reactivation of the vessel UST Atlantic (presently S/T Marine Atlantic) in the Keppel Shipyards in Singapore, which included the refurbishment of both the portside and the starboard hose handling cranes that were mounted on the vessel S/T Marine Atlantic on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

15a. MTL International Ship Management, Inc. supervised the reactivation of the vessel UST Atlantic (presently S/T Marine Atlantic) in the Keppel Shipyards in Singapore, which included the refurbishment of both the portside and the starboard hose handling cranes that were mounted on the vessel S/T Marine Atlantic on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

15b. Marine Transport Lines, Inc. supervised the manufacture of the vessel UST Atlantic (presently S/T Marine Atlantic) in the Keppel Shipyards in Singapore, which included the refurbishment of both the portside and the starboard hose handling cranes that were mounted on the vessel S/T Marine Atlantic on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

15c. MTL International Ship Management, Inc. supervised the reactivation of the vessel UST Atlantic (presently S/T Marine Atlantic) in the Keppel Shipyards in Singapore, which included the refurbishment of both the porthside and the starboard hose handling cranes that were mounted on the vessel SIT Marine Atlantic on May 17, 1999.

Response: Subject to and without waiving the General

Objections above and any other objections herein, denied.

16. During the process of the reactivation of the vessel S/T Marine Atlantic, Keppel Shipyard issued invoices to Marine Transport Lines, Inc. for work done on said vessel, and MTL, in turn, sent the invoices to Marine Atlantic Ltd.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

16a. During the process of the reactivation of the vessel S/T Marine Atlantic, Keppel Shipyard issued invoices to International Ship Management, Inc. for work done on said vessel, and International Ship Management, Inc. in turn, sent the invoices to Marine Atlantic Ltd.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

17. Acomarit has possession of, or access to, the invoices for work done which are referred to in Admission No. 16 and 16a above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

18. After the vessel S/T Marine Atlantic left the Keppel Shipyard, Marine Atlantic Ltd. was the owner of the vessel.

Response: Subject to and without waiving the General

Objections above and any other objections herein, denied.

18a. Marine Atlantic Ltd. then retained the services of MTL International Ship Management, Inc. as the technical manager of the vessel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

19. From 1994 through 1996 MTL International Ship Management, Inc. acted as the technical manager of the vessel while Marine Atlantic, Ltd., the owner, chartered the vessel to various maritime entities or parties.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

20. When Marine Atlantic Ltd. released MTL International Ship Management, Inc. as the technical management of the vessel S/T Marine Atlantic, Marine Atlantic Ltd. transferred the technical management of the vessel to Defendant, Acomarit, who at this time was known as Acomarit Services Maritimes, S.A.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied. Defendant admits, however, that it assumed management of the vessel MARINE ATLANTIC after the MTL contract with the vessel's owners expired.

21. Acomarit operated the vessel as its technical manager

from the date when it received the turnover of the vessel from MTL International Ship Management, Inc. until May 17,
1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied as written. Defendant admits, however, that it managed the vessel from the time of its turnover from MTL through May 17, 1999.

22. From the date in 1996 when the technical management of the vessel S/T Marine Atlantic was transferred from MTL International Ship Management, Inc. to Acomarit, until May 17, 1999, Acomarit Services Maritimes, S.A. was the technical manager of the vessel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied as written. Defendant admits, however, that it managed the vessel from the time of its turnover from MTL through May 17, 1999.

23. Thomas Garrett performed the services of Port Captain for Acomarit and attended Acomarit owned or managed vessels which docked at ports in the United States of America, as well as Central America, and which conducted operations in the Gulf of Mexico.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

24. Acomarit obtained the agreement of another entity

Osprey-Acomarit Ship Management, Inc. to place Thomas Garrett on Osprey-Acomarit's payroll.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

25. Acomarit has possession of, or access to, documents that reflect that agreement between Acomarit and Osprey-Acomarit Ship Management, Inc. for Osprey-Acomarit to pay for, and be reimbursed by Acomarit, for the services performed by Thomas Garrett as Acomarit's Port Captain attending Acomarit owned and/or managed vessels in the United States referred to in Admission No. 24 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

26. During the time Thomas Garrett operated as Port Captain for Acomarit, Thomas Garret was paid as an employee by Osprey-Acomarit.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

27. Acomarit has possession of, or access to, the financial documents reflecting payments made to Osprey-Acomarit Ship Management, Inc. for reimbursement of payments by Osprey-Acomarit to Thomas Garrett for the services performed by him as Acomarit's Port Captain for Acomarit owned and/or managed vessels in the United States as discussed in Admission No. 24 above.

Response: Subject to and without waiving the General

Objections above and any other objections herein, denied.

28. Osprey-Acomarit Ship Management, Inc. deducted withholding tax from Thomas Garrett's earnings which were paid by Osprey-Acomarit to Thomas Garrett as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

29. Defendant Acomarit reimbursed Osprey-Acomarit Ship Management, Inc. for all the payments for employment wages which Osprey-Acomarit paid to Thomas Garrett while Thomas Garret was acting as Acomarit's Port Captain.

i3esponse: Subject to and without waiving the General Objections above and any other objections herein, denied.

30. Acomarit has possession of, or access to, the financial documents referred to in Admission No. 29.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

31. Osprey-Acomarit Ship Management, Inc. extended employment benefits to Thomas Garrett while Thomas Garrett acted as Acomarit's Port Captain, including a medical health plan, as well as a retirement plan.

Response: Subject to and without waiving the General Objections above and any other objections

herein, denied.

32. Acomarit has possession of, or access to, the documents referred to in Admission No. 31.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

33. From 1997, during the period that Thomas Garrett was acting as Acomarit's Port Captain, Thomas Garrett resided in Nazareth, Pennsylvania.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

34. From 1997 through May 17, 1999, Thomas Garrett received no instructions from Osprey-Acomarit Ship Management, Inc. concerning the work that Acomarit instructed him to perform as its Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is without information or knowledge sufficient to answer this request. To the extent a response is required. denied.

35. From 1997 through May 17, 1999, Thomas Garret received no work instructions from Osprey-Acomarit Ship Management, Inc.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is without information or knowledge sufficient to answer this request.

To the extent a response is required, denied.

36. From 1997 through May 17, 1999, Thomas Garrett, as an employee of Osprey-Acomarit Ship Management, Inc. did not have a person to report to at Osprey-Acomarit.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is without information or knowledge sufficient to answer this request. To the extent a response is required, denied.

37. From 1997 through May 17, 1999, Thomas Garrett reported directly to Acomarit concerning the services he rendered for Acomarit as its Port Captain.

Subject to and without waiving the General Objections above and any other objections herein, denied.

38. From 1997 through May 17, 1999, Thomas Garrett made and/or received telecommunications, including messages by cell phone, telephone, fax, telex, and email, to or from Acomarit at his home in Nazareth, Pennsylvania during which his duties and/or activities as Acomarit's Port Captain were discussed.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

39. Acomarit has possession of, or access to, the telecommunication records reflecting the communications referred to in Admission No. 38 above.

Response: Subject to and without waiving the General

Objections above and any other objections herein, denied.

40. Between 1997 and May 17, 1999, Thomas Garrett visited the S/T Marine Atlantic and while attending the vessel witnessed the performance of its portside hose handling crane.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

41. The portside hose handling crane on the S/T Marine Atlantic had deficiencies in operation prior to May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

42. When Thomas Garrett inspected the S/T Marine Atlantic, he did not report any deficiencies in the portside hose handling crane.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

43. When Thomas Garrett witnessed the performance of the portside handling crane that was mounted on the S/T Marine Atlantic, he did not disassemble the crane and inspect the spline coupling or the gears of the crane prior to May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

44. On May 17, 1999, while Acomarit was acting as technical manager of the vessel S/T Marine Atlantic, Captain Sheriff Saudi, a Mooring Master, was placed aboard the S/T Marine Atlantic from a tender vessel by Acomarit personnel who were utilizing the portside hose handling crane as a personnel lift.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

45. Captain Sheriff Saudi, the Mooring Master on board S/T Marine Atlantic on May 17, 1999, was an employee of American Eagle Tankers.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is without sufficient information or knowledge to admit or deny the allegations set forth in this request. To the extent a response is required, denied.

46. Captain Sheriff Saudi's employer, American Eagle Tankers, had been retained by Koch Petroleum Group, L.P. to assess and, if possible, to carry out lightering operations.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is without sufficient information or knowledge to admit or deny the allegations set forth in this request. To the extent a response is required, denied.

47. Pursuant to a contract, Koch Petroleum Group, L.P. had chartered the vessel S/T Marine Atlantic from

the vessel's owner, Marine Atlantic Ltd., prior to May 17, 1999, and such charter was still in effect on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

48. Acomarit has possession of, or access to, the contract referred to in Admission No. 47 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied as written. Defendant admits that it has a copy of the contract that was provided to it, and which was produced to Plaintiff in the Houston action. See also contract document produced by Koch Shipping.

49. After conducting his assessment concerning lightering on May 17, 1999, Captain Sheriff Saudi was placed in a basket connected by a cable to the lifting arm (jib) of the portside hose handling crane for the purpose of lifting him off the vessel by Acomarit personnel.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

50. On May 17, 1999, while Acomarit personnel were utilizing the portside hose handling crane to lift Captain Sheriff Saudi off of the vessel S/T Marine Atlantic to a waiting tender vessel, the portside hose handling crane collapsed dumping Captain Sheriff

Saudi into the Gulf of Mexico.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

51. Captain Sheriff Saudi suffered severe injuries when he was dumped into the Gulf of Mexico.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

52. The lifting arm (jib) of the portside hose handling crane struck the side of the vessel S/T Marine Atlantic, broke off, and followed Captain Sheriff Saudi into the Gulf of Mexico.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

53. The cable which was lifting the basket attached to the portside hose handling crane while Captain Saudi was being lifted off the vessel S/T Marine Atlantic snapped and lashed Captain Saudi causing a compound fracture and lacerations to his left arm, as well as other serious fractures and injuries.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

54. Inspection of the portside hose handling crane aboard the S/T Marine Atlantic on May 17, 1999, performed

by Acomarit personnel of the crane, revealed that the face of the gears of the internal spline coupling relied upon by the portside hose handling crane for support, had corroded to such an extent that the gears were allowed to spin free from each other thereby causing the crane's lifting arm (jib) to collapse.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

55. Thomas Garrett, Acomarit's Port Captain, attended numerous Acomarit owned and/or operated vessels in U.S. ports from 1997 onward until he ceased working for them.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

56. Acomarit has possession of, or access to, documents that reflect the Acomarit owned and/or managed vessels that Thomas Garrett attended for them from 1997 onward referred to in Admission No. 55 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

57. Thomas Garrett received telecommunication or telephone instructions from Acomarit while he was physically located at his residence in Pennsylvania, or elsewhere in Pennsylvania, dispatching him to locations where Acomarit owned or managed vessels to be attended according to Acomarit's instructions from 1997 until he left his position as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

58. Acomarit has possession of, or access to, records reflecting the telecommunication instructions it gave to Thomas Garrett that are referred to in Admission No. 57 above.

Response: Subject to and without waiving the General Objections above, the objections set forth in response to RFA No. 57, and any other objections herein, denied.

59. Thomas Garrett made telephone calls to Acomarit while he was physically located at his residence in Pennsylvania, or elsewhere in Pennsylvania, dispatching him to locations where Acomarit owned or managed vessels to be attended according to Acomarit's instructions from 1997 until he left his position as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

60. During the period of time from the date Thomas Garrett began acting as Acomarit's Port Captain through the date he ceased to act as Acomarit's Port Captain, Thomas Garrett performed services in the state of Pennsylvania, or its territorial waters, while acting as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

61. Acomarit has possession of, or access to, records that

reflect the services that Thomas Garrett performed for Acomarit as its Port Captain in the state of Pennsylvania, or its territorial waters as referred to in Admission No. 60 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

62. Thomas Garrett performed labor or services on vessels located in the state of Pennsylvania while acting under the supervision, direction, and control of Acomarit.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

63. Acomarit reimbursed Osprey-Acomarit amounts paid to Tom Garrett by Osprey-Acomarit as its employee.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

64. Acomarit has possession of, or access to, records showing amounts paid to Thomas Garrett by Osprey-Acomarit referred to in Admission No. 63 above.

Response: Subject to and without waiving the General Objections above, the objections set forth in response to RFA No. 63, and any other objections herein, denied.

65. Financial instruments and/or documents exist which prove that Acomarit Services Maritimes, S.A. repaid

Osprey-Acomarit for amounts that Osprey-Acomarit paid to Tom Garrett as a result of Tom Garrett's performance of his duties as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

66. Acomarit has possession of, or access to, the financial documents referred to in Admission No. 64 above.

Response: Subject to and without waiving the General Objections above, the objections set forth in response to RFA No. 64, and any other objections herein, denied. Defendant admits, however, that it possesses documents relating to the reimbursement to Osprey-Acomarit for payments made on behalf of Thomas Garrett.

67. Acomarit kept a phone log of all conversations, which it had with Tom Garrett pertaining to Tom Garrett's duties and activities as Acomarit's Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

68. Acomarit has possession of, or access to, the phone logs referred to in Admission No. 67 above.

Response: Subject to and without waiving the General Objections above, the objections set forth in response to RFA No. 67, and any other objections herein, denied.

69. Acomarit reimbursed Thomas Garrett for expenses incurred by Thomas Garrett in carrying out Thomas Garrett's duties as Port Captain.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

70. Acomarit has possession of, or access to, custody or control of documents reflecting reimbursements which were made to Thomas Garrett for expenses Thomas Garrett incurred in carry out his duties as Acomarit's port captain, including his long distance and local telephone calls, hotel charges, airfare, helicopter rental, telexes, the purchase of ship supplies and/or inventory referred to in Admission No. 69 above.

Response: Subject to and without waiving the General Objections above, the objections set forth in response to RFA No. 69, and any other objections herein, denied.

71. Attached to these Admissions and marked Exhibit A is a true and correct copy of Acomarit Services Maritimes, Sac's Motion to Dismiss filed in the United States District Court for the Southern District of Texas, Houston Division.

Response: Subject to and without waiving the General Objections above and any other objections herein, admitted.

72. In that Motion Acomarit's counsel, Mr. Tom Nork, represented to the United States District Court for the Southern District of Texas, Houston Division, that

Acomarit had no employees located in the United States as of May 17, 1999, the date of Captain Sheriff Saudi's injuries.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied as written. The motion speaks for itself.

73. Since Saudi's filing of a civil action against Acomarit in the United States District Court for the Southern District of Texas, Houston Division, Thomas Nork and Keith Letourneau have acted as Tom Garrett's counsel.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

74. Acomarit owns vessels that call at the port of Corpus Christi, Texas, and other ports in the United States.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

75. Acomarit has possession of, or access to, documents that reflect the vessels referred to in Admission No. 66 that call at the port of Corpus Christi, Texas, and other ports in the United States referred to in Admission No. 74 above.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied.

76. Acomarit manages vessels that call at the port of

Corpus Christi, Texas, and other ports in the United States.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without waiving the General Objections above and any other objections herein, denied as written. Defendant, however, admits that it has managed vessels that have called at Corpus Christi and other U.S. ports at the direction of vessel chatterers.

77. Acomarit has possession of, or access to, documents that reflect the vessels referred to in Admission No. 76 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied as written. Defendant, however, admits that it possesses documents concerning vessels that it has managed that have called at Corpus Christi and other U.S. ports at the direction of vessel chatterers.

78. Acomarit owns, or has owned, shares of stock in a Bermuda corporation(s).

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

79. Acomarit has possession of, or access to, documents that reflect the Bermuda corporation(s) in which it owns, and/or has owned, shares referred to Admission N. 78 above.

Response: Subject to and without waiving the General

Objections above and any other objections herein, denied.

80. Acomarit owns, or has owned, shares of stock in a Bermuda corporation known as Monte Crisco Ship Holdings, Ltd.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

81. Acomarit has possession of, or access to, documents that reflect the shares of stock that it owns, or has owned, in Monte Crisco Ship Holdings, Ltd. referred to Admission N. 80 above.

Response: Subject to and without waiving the General Objections above and any other objections herein, denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
Plaintiff,	§	
v.	§	Civil Action No.
	§	01-0501475
ACOMARIT MARITIMES	§	
SERVICES, S.A.,	§	
Defendant.	§	

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION

To: Plaintiff Captain Sheriff Saudi, c/o Izen & Associates, P.C., 5222 Spruce Street, Bellaire, TX 77401

COMES NOW Defendant Acomarit Services Maritimes S.A., now known as V Ships Switzerland S.A. ("Defendant") and serves the following objections and answers to Plaintiff's First Set of Requests for Production.

Respectfully submitted,

Carl D. Buchholz, III.
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Philadelphia, PA 19107
215-575-4200
FAX 215-563-2583

Of Counsel:

Rawle & Henderson
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Keith B. Letourneau (TBA No. 00795893)
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713-871-8822; Fax 713-871-8844

GENERAL OBJECTIONS: Defendant has on file before the Court a motion to dismiss for lack of personal jurisdiction. The answers set forth herein are made subject to that motion and Defendant's special appearance in this action. Defendant objects to each of the requests for production below that seeks the discovery of information not permitted by the Federal Rules of Civil Procedure. Specifically, Fed. R. Civ. P. 26(b) provides that the scope of discovery is limited to "any matter, not privileged, that is relevant to the claim or defense of any party Numerous requests set forth below are not relevant to the claims of Plaintiff Sheriff Saudi ("Saudi") against Defendant, nor to the defenses of Defendant to Saudi's claims. Defendant also objects to the extent Saudi seeks documents relating to other entities, companies, or parties in other civil lawsuits; such requests are not relevant to the claims asserted by Saudi against Defendant nor the defenses of Defendant to Saudi's claims. Defendant also objects to each request for production that seeks multiple answers in a single request. Defendant also generally objects to each request below that seeks information that is as readily available to Plaintiff as to Defendant. Defendant also objects to the number of requests propounded herein as patently burdensome and harassing. Defendant also objects to these requests to the extent they were prepared in whole or in part by Saudi's Houston counsel, who are not admitted to practice in the Pennsylvania action. Defendant also objects to each request that seeks documents concerning matters that predate Defendant's involvement with the vessel MARINE ATLANTIC. Defendant is without personal knowledge to address any such matters. Defendant objects to each request that employs the term "and/or" because such phrase necessarily is ambiguous and asks multiple or alternative questions in a single request. Defendant also objects to these requests for production because they were served in violation of the Federal Rules of Civil Procedure. Defendant also objects to each request for production that seeks the production of privileged information, including information

protected by the attorney-client privilege and attorney work-product doctrine. Defendant also objects to each characterization of Tom Garrett as Defendant's port captain.

RESPONSES TO PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS

1. All contracts between Tom Garrett and Acomarit.

Response: Subject to and without waiving the General Objections above and any other objections herein, none.

2. All contracts between Osprey Acomarit and Acomarit regarding labor or services, including the labor or employment of Tom Garrett from 1995 to the present date.

Response: Subject to and without waiving the General Objections above and any other objections herein, none.

3. All correspondence by and between Tom Garrett and Acomarit Services Maritimes, S.A. from 1995 to present date.

Response: Defendant objects to this request for production as beyond the scope of permissible discovery, which is limited to matters that are relevant to the claim or defense of a party. Moreover, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral

estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General Objections above and any other objections herein, Defendant has previously produced to Plaintiff in the Houston action documentation in its possession concerning the subject matter of Plaintiff's claims. See also the deposition transcript of Tom Garrett, and exhibits thereto. Mr. Garrett testified at his eight hour deposition, which Plaintiff took in the Houston action, concerning his communications with Defendant, and Plaintiff had an opportunity at that time to inquire of Mr. Garrett regarding his correspondence with Defendant. Defendant is reviewing its records in Switzerland and will make available responsive documents found, if any, at its offices in Geneva, Switzerland, at a mutually convenient date and time.

4. All correspondence between Osprey Acomarit and Acomarit Services Maritimes, S.A. involving retention of labor and services of Tom Garrett, and any other individual or entity, from 1995 to the present date.

Response: Defendant objects to this Request as vague, ambiguous, unduly burdensome harassing, and not properly limited in scope to the claims or defenses of a party. Moreover, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by

the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General Objections above and any other objections herein, Defendant has previously produced to Plaintiff in the Houston action documentation in its possession concerning the subject matter of Plaintiff's claims. Defendant is reviewing its records in Switzerland and will make available responsive documents found, if any, at its offices in Geneva, Switzerland, at a mutually convenient date and time.

5. All checks, bank statements, drafts, wire transfers, and any other financial instruments reflecting payment from Osprey Acomarit to Acomarit Services Maritimes, S.A., or from Acomarit to Osprey Acomarit, pertaining to the labor or services of Tom Garrett, and any other individual or entity, from 1995 to the present date.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Moreover, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General Objections above and any other objections

herein, Defendant is reviewing its records in Switzerland and will make available any responsive documents found, if any, at its offices in Geneva, Switzerland, at a mutually convenient date and time.

6. All financial documents including checks, bank statements, drafts, wire transfers, reflecting payments for labor or services of Tom Garrett, or any other individual or entity, from Acomarit to Osprey-Acomarit from 1995 to the present date.

Response: See response to RFP No. 5 above, which is incorporated herein by reference.

7. All financial documents including canceled checks, bank statements, drafts, wire transfers, reflecting payments for labor or services from Osprey Acomarit to Tom Garrett, or any other individual or entity, from 1995 to the present date.

Response: See response to RFP No. 5 above, which is incorporated herein by reference.

8. All phone bills reflecting telephone calls from Acomarit to Tom Garrett or from Tom Garrett to Acomarit from 1995 to the present date.

Response: See response to RFP No. 5 above, which is incorporated herein by reference.

9. All phone logs, memos and descriptions of any form of any telephone calls from Tom Garrett to Acomarit or from Acomarit to Tom Garrett from 1995 to the present date.

Response: See response to RFP No. 5 above, which is

incorporated herein by reference.

10. All documentation, including reports, memos, and logs prepared by Tom Garrett while acting as the Port Captain of Acomarit, including those documents pertaining the occasions where Tom Garrett "attended" the S/T Marine Atlantic in the Gulf of Mexico while acting as Acomarit's Port Captain.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Moreover, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Defendant also objects to Plaintiff's characterization of Tom Garrett as Defendant's port captain. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. Subject to and without waiving the General Objections above and any other objections herein, none.

11. All documents, logs, memos, and any other writings reflecting any direction, supervision. monitoring, or orders given to or directed at Tom Garrett by Acomarit while Tom Garrett "attended" any vessel in the State of Pennsylvania and the Port of Philadelphia.

Response: Subject to and without waiving the General Objections above and any other objections herein, none.

12. All financial documents, papers and writings, including canceled checks, bank statements, drafts, and wire transfers reflecting reimbursement to Osprey Acomarit, Tom Garrett, or any other party or entity for expenses incurred as a result of Tom Garrett's dealings, performance and duties as Port Captain for Acomarit Services Maritimes, S.A.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Moreover, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Defendant also objects to Plaintiff's characterization of Tom Garrett as Defendant's port captain. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. Subject to and without waiving the General Objections above and any other objections herein, none.

13. A true and correct copy of the manufacturer's manual concerning and describing the portside hose handling crane that collapsed on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, see documentation produced in the Houston action, including documents accompanying expert witness reports in that case.

14. All contracts and agreements for, and any other writings pertaining to, repair of Acomarit managed or owned vessels in ports located in the United States.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

15. All documents, manifests, computer printouts, or any other writing stating the dates, times, and locations that Acomarit owned or managed vessels docked at ports in the United States form 1 995 to the present date.

Response: Defendant objects to this request as overly broad. unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other

objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

16. All documents, writings, and any other tangible evidence reflecting any ownership interest or involvement which any Acomarit entity has, or has had, in or with Monte Cristo Ship Holdings, Ltd. and/or any other entity in Bermuda.

Subject to and without waiving the General Objections above and any other objections herein, none.

17. All written documents, manifests, logs and memos reflecting travel or work of any Acomarit employees, officers. directors, independent contractors or agents in the United States from 1995 to the present date.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no

more than an impermissible fishing expedition barred by the Federal Rules.

18. All writings, documents, manifests, logs, and other writings which contain the names, addresses and all present telephone numbers, and all nationals and/or residents of all Acomarit personnel aboard Acomarit owned or managed vessels form 1995 to the present date, including those Acomarit owned and/or managed vessels that docked in the United States from 1995 to the present date.

Response: Defendant objects to this request as vague, ambiguous and unintelligible. Defendant also objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

19. All written documents reflecting any and all United States Coast Guard inspections of Acomarit managed or owned vessels that docked at ports in the United States or that were carried out on the high seas for the intended economic benefit of Acomarit from 1995 to the present.

Response: Defendant objects to this request as overly

broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

20. All corporate documents, and/or joint venture documents, including minutes, bylaws, memos, and articles of incorporation and/or partnership agreements for the period from 1995 to the present date reflecting Acomarit's approval of retention of the services of Thomas Garrett as its Port Captain.

Response: Defendant objects to this request as vague and ambiguous. Defendant also objects to Plaintiff's characterization of Tom Garrett as Defendant's port captain. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General

Objections above and any other objections herein, none.

21. All corporate documents, and/or joint venture documents, including minutes, bylaws, memos and articles of incorporation and/or partnership agreements reflecting discussions of approval or disapproval of any actions that Thomas Garrett carried out while he was acting as Acomarit's Port Captain from 1995 to the present date.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Defendant also objects to Plaintiff's characterization of Tom Garrett as Defendant's port captain. Mr. Garrett testified at his deposition that he served as a consultant for a number of companies, including Defendant. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. Subject to and without waiving the General Objections above and any other objections herein, none.

22. All pleadings, legal memos, briefs and any other papers contained in any legal files in which Acomarit raised the defense of lack of personal jurisdiction of

any of the Courts of the United States, including Courts in the State or Federal system, from 1993 to the present date.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

23. All writings, manifests, purchase orders, receipts and any other documents reflecting any purveyors or seller of goods and services to Acomarit owned or managed vessels which docked in ports in the United States from 1995 to the present date.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no

more than an impermissible fishing expedition barred by the Federal Rules.

24. Please produce all contracts, agreements, documents that evidence work relations and affiliations, money transactions, advertising, hiring contracts, employment contracts, consulting agreements, consulting fee contracts, subscriptions, taxes paid to any governmental entity, contractor(s), and/or liaison of Acomarit in the United States. This shall include any third-party that is used or has been used to/for any contract with any party or entity in the United States of America, including, but not limited to:

a. Please produce all contracts, agreements and evidence of payment arrangements between Acomarit, and/or Marine Atlantic, Ltd. and Monte Cristo Ship Holdings, Ltd., including, but not limited to, checks, cashier checks, money orders, drafts, wire transfers, electronic debits or credits and offsets of any kind;

b. Please produce all contracts/agreements between any third party representing Acomarit, their agents or affiliates, with any entity located in any of the fifty (50) states and/or territories of the United States of America, including, but not limited to, checks, cashier checks, money orders, drafts, wire transfers, electronic debits or credits and offsets of any kind for the past ten (10) years to the present;

c. Please produce copies of all Bills of Lading that Acomarit possesses reflecting the transfer of any type of cargo to and from all Acomarit

owned and/or managed vessels, including, but not limited to the "S/T Marine Atlantic" to any docks, platform(s), vessel(s) and/or other facilities) located in harbors, ports, docking facilities, territorial waters, and/or the "exclusive economic zone" of the United States of America, as defined by 33 C.F.R. for the past ten (10) years to the present;

d. Please produce copies of the Tank Vessel Examination Certificate(s) issued to the "S/T Marine Atlantic" by the United States Coast Guard for the past ten (10) years to the present;

e. Please produce copies of all Certificate(s) of Financial Responsibility for the past ten (10) years to the present submitted by Acomarit owned and/or managed vessels and Marine Atlantic, Ltd. to the United States Coast Guard and the Environmental Protection Agency in the United States of America;

f. Please produce copies of all contracts, agreements and invoices between Acomarit, and all of its agents, with ship's agents, ships chandlers, and/or their nominating agents located in any of the 50 states and/or territories of the United States of America;

g. Please produce copies of all maintenance contracts with the manufacturer of the cargo cranes and/or the successor of the manufacturer and/or any other maintenance companies, and/or suppliers of spare parts for S/T Marine Atlantic cargo cranes, and all receipts and/or proofs of payment for such

maintenance;

h. Please produce copies of any and all invoices for payment(s). contracts, agreements and any and all other documents that represent arrangement made and payment for provisions, supplies, personnel transfers, bunker and any other necessities or services performed by helicopter services, airplanes, boats or any other transport services since the arrival of the S/T Marine Atlantic to the navigable waters of the USA in early 1999 through July 25, 1999, when the "S/T Marine Atlantic" departed from the "exclusive economic zone" of the United States of America;

Please produce certified copies of the "Ship's Log" and the "Master's Log" for the vessel "S/T Marine Atlantic" from December 1, 1998 through January, 2000;

j. Please produce any and all documents that represent arrangements made and payments made to United States entities and/or agents for the Acomarit owned and/or managed fleet of vessels, including, but not limited to the "SIT Marine Atlantic", for the past (10) years to the present;

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that

Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. As to documents that relate to the incident at issue, see Defendant's initial discovery disclosures, responses to requests for production of documents, and documents accompanying expert witness reports in the Houston action, as well as documents produced by defendants Koch Shipping and Marine Transport Lines, all of which have been previously produced to Plaintiff. See also deposition transcripts of Robert Hamshaw, and Thomas Garrett, which depositions were taken by Plaintiff in the Houston action.

25. Please produce by name, date and location(s), any and all contracts of Acomarit, their agents and affiliates with any port authorities, pilot(s), agent(s), and ship chandler(s) within the boundaries of the United States of America. Please produce a list of name(s) of each vessel that Acomarit had managed or is managing, or owned or owns, that had United States port(s)-of-call, and the dates of arrival and departure from the United States port(s)-of-call, since the time of creation of Acomarit through the present.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for

the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules.

26. Please produce all documents reflecting the identity of all charter companies that have contracted, chartered, hired or had any type of agreement with Acomarit to render services in the territorial waters and the exclusive economic zone of the United States of America and/or to render services anywhere in the world for a United States company or any of its agents or affiliates for the past ten (10) years to the present, including the names, current addresses and telephone numbers.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. As to documents that relate to the incident at issue, see Defendant's initial discovery disclosures, responses to requests for production of

documents, and documents accompanying expert witness reports in the Houston action, as well as documents produced by defendants Koch Shipping and Marine Transport Lines, all of which have been previously produced to Plaintiff.

27. Please produce a copy of the navigational chart that the SIT Marine Atlantic was using at the time of the incident on May 17, 1999.

Response: Subject to and without waiving the General Objections above and any other objections herein, Defendant is reviewing its records to ascertain whether the chart still exists, two and one-half years after the incident date, and will make available any responsive documents found, if any, at its offices in Geneva, Switzerland, at a mutually convenient date and time.

28. Please produce all documents evidencing correspondence and/or communications between the S/T Marine Atlantic and any entity in the United States of America or any other country for the period starting forty-eight (48) hours prior to the arrival of the S/T Marine Atlantic in the navigable waters of the United States in early 1999 through July 25, 1999 when the S/T Marine Atlantic departed the exclusive economic zone of the United States of America, including, but not limited to, correspondence which is either written, typed, and/or transmitted in any form, and detailed cellular telephone billings and detailed Marsat Communications (marine satellite).

Response: Defendant objects to this request as vague, ambiguous, overly broad, unduly

burdensome, harassing, and not limited in scope to the claims or defenses of a party to this action. Subject to and without waiving the General Objections above and any other objections herein, Defendant is reviewing its records to ascertain whether any such records exist, two and one-half years after the incident date, and will make available any responsive documents found, if any, at its offices in Geneva, Switzerland, at a mutually convenient date and time.

29. Please produce a true and correct copy of any and all agreements to mediate and/or arbitrate disputes between Acomarit and any person or entity in the United States.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Subject to and without waiving the General Objections above and any other objections herein, the federal district court for the Southern District of Texas has ruled that Rule 4(k)(2) jurisdiction does not exist over Defendant in the United States. Thus, any questions concerning nationwide contacts are barred by the doctrines of res judicata and collateral estoppel. This interrogatory is no more than an impermissible fishing expedition barred by the Federal Rules. As to documents that relate to the incident at issue, see Defendant's initial discovery disclosures, responses to requests for production of documents, and documents accompanying expert witness reports in the Houston action, as well as documents produced by defendants

Koch Shipping and Marine Transport Lines, all of which have been previously produced to Plaintiff.

30. Please produce a true and correct copy of any and all polices of insurance, and/or policies and/or contracts that cover all liability, injury, fire, and Acts of God for the vessel "S/T Marine Atlantic" from their inception through the present.

Response: Defendant objects to this request as overly broad, unduly burdensome, harassing, and not limited in scope to the claims or defenses of a party. Defendant also objects to this request as seeking documents that predate Defendant's involvement with the vessel MARINE ATLANTIC. Subject to and without waiving the General Objections above and any other objections herein, see documents produced by Defendant in response to requests for the production of documents in the Houston action.

31. Please produce a true and correct copy of any and all expert witness reports, surveyors' reports regarding the vessel "S/T Marine Atlantic", the port and starboard cargo cranes, all U.S. Coast Guard reports, and any and all other reports prepared in regard to the "S/T Marine Atlantic" from their inception through the present.

Response: Subject to and without waiving the General Objections above and any other objections herein, see documents produced by defendant in Houston action, as well as expert designations, reports and accompanying documents produced by Defendants in the

Houston action, which also serves as Defendant's expert designations and reports in the Pennsylvania action.

32. Please produce a true and correct copy of any and all engineer's logs, ship's log(s), and any and all other documents of any description and kind that set out the exact maintenance performed on the portside hose handling crane from the date of installation through the present.

Response: Subject to and without waiving the General Objections above and any other objections herein, see documents produced by Defendant, as well as Defendant's initial discovery disclosures, answers to interrogatories, responses to requests for production of documents, and documentation accompanying defendants' expert reports in the Houston action. See also documents produced by defendants Koch Shipping and Marine Transport Lines in the Houston action. See also deposition transcripts of Richard Farman and Thomas Garrett, and the trial testimony of Richard Farman in the Houston action.

33. Please produce a true and correct copy of any and all written documents from anyone who expressed an opinion (of any type) certified and/or sworn as to the condition of the vessel "S/T Marine Atlantic" and the condition of the portside hose handling crane aboard the vessel "S/T Marine Atlantic" on May 17, 1999 through the present.

Response: Defendant objects to this request as vague and ambiguous. Subject to and without

waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures, answers to interrogatories, responses to requests for production of documents, and documentation accompanying defendants' expert reports in the Houston action. See also documents produced by defendants Koch Shipping and Marine Transport Lines in the Houston action. See also deposition transcripts of Richard Farman and Thomas Garrett, and the trial testimony of Richard Farman in the Houston action.

34. Please produce a true and correct copy of any and all reports and certificates of tests and inspections performed on the portside and starboard side hose handling cranes on the vessel "S/T Marine Atlantic" from the date of installation through the present.

Response: Defendant objects to this request as overly broad, unduly burdensome, vague, ambiguous, and not limited in scope to a claim or defense of a party. Defendant also objects to this request because it seeks documents that predate Defendant's involvement with the vessel MARINE ATLANTIC. Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures, answers to interrogatories, responses to requests for production of documents, and documentation accompanying defendants' expert reports in the Houston action. See also documents produced by defendants Koch Shipping and Marine Transport Lines in the Houston

action. See also deposition transcripts of Richard Farman and Thomas Garrett, and the trial testimony of Richard Farman in the Houston action.

35. Please produce a true and correct copy of any and all reports and/or logs of maintenance performed on the portside and starboard hose handling cranes on the vessel "S/T Marine Atlantic" from the date of installation through the present.

Response: Defendant objects to this request as overly broad, unduly burdensome, vague, ambiguous, and not limited in scope to a claim or defense of a party. Defendant also objects to this request because it seeks documents that predate Defendant's involvement with the vessel MARINE ATLANTIC. Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures, answers to interrogatories, responses to requests for production of documents, and documentation accompanying defendants' expert reports in the Houston action. See also documents produced by defendants Koch Shipping and Marine Transport Lines in the Houston action. See also deposition transcripts of Richard Farman and Thomas Garrett, and the trial testimony of Richard Farman in the Houston action.

36. Please produce a true and correct copy of any and all documents relating to the ownership of the portside hose handling crane, the purchase of that crane, the installation of that crane, the design of that crane, all

inspections of the crane, all tests of that crane, all repairs done to that crane, all maintenance of that crane and the dates of the use of that crane from the time last certified until May 17, 1999.

Response: Defendant objects to this request because it is overly broad, unduly burdensome, vague, ambiguous, and is not limited to the precise mechanical components of the crane at issue in this matter. Subject to and without waiving the General Objections above and any other objections herein, see Defendant's initial discovery disclosures, answers to interrogatories, responses to requests for production of documents, and documentation accompanying defendants' expert reports in the Houston action. See also documents produced by defendants Koch Shipping and Marine Transport Lines in the Houston action. See also deposition transcripts of Richard Farman and Thomas Garrett, and the trial testimony of Richard Farman in the Houston action.

37. Please produce a true and correct copy of any and all reported or unreported failures of the crane and/or all incident or accident reports of any kind or nature involving the vessel "S/T Marine Atlantic" and any of its cargo cranes from the date of their installation through the present.

Response: Defendant objects to this request as overly broad, unduly burdensome, vague, ambiguous, and not limited in scope to a claim or defense of a party. Defendant also objects to this request because it seeks documents that predate Defendant's

involvement with the vessel MARINE ATLANTIC. Subject to and without waiving the General Objections above and any other objections herein, Defendant is aware of the existence of no such documents.

Appendix F

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AT PHILADELPHIA, PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
Plaintiff,	§	
	§	
VS.	§	NO. 01—4301
	§	
ACOMARIT SERVICES	§	
MARITIMES S.A., ET AL	§	
Defendants.	§	

PLAINTIFF. CAPTAIN SHERIFF SAUDI'S. MOTION TO COMPEL PURSUART TO COURT ORDER DATED NOVEMBER 25, 2002

TO THE HONORABLE UNITED STATES DISTRICT JUDGE OF SAID COURT:

Plaintiff, Captain Sheriff Saudi, In Propria Persona, files his Motion to Compel pursuant to this Court's Order dated November 25, 2002, and would respectfully show unto the Court the following:

BACKGROUND LEADING UP FILING OF MOTION TO COMPEL

I.

1. This Court entertained a hearing on all pending motions in this case on the 18th day of October, 2002. As a result of that hearing, this Court entered an order directing Plaintiff Saudi to meet with Acomarit's counsel to attempt to resolve Plaintiff Saudi's complaints against Defendant, Acomarit Services Maritimes, S.A., ("ACOMARIT") for failure to comply with discovery.

2. Prior to meeting with Acomarit's counsel, Saudi prepared and served a list of information which he needed in order to complete jurisdictional discovery. After receiving the list, Acomarit's counsel sent a letter claiming that "most" of the information sought exceeded the scope of jurisdictional discovery previously granted by Court order in this case.

3. Thereafter, when Saudi met with Messrs. Nork and Letourneau, they announced that Defendant Acomarit was not going to produce any additional discovery documents and responses over and above those already produced and /or filed.

4. Plaintiff Saudi had already chronicled the discovery misconduct of Acomarit and its counsel in his Motion to Strike Pleadings overruled by this Court at the October 18, 2002 hearing. Saudi reurges all of the arguments contained in his previous Motion to Strike Pleadings and incorporates them by reference herein.

5. Although given an additional opportunity by this Court to comply with the Court's previous order compelling it to respond, or make further responses to, Saudi's interrogatory Nos. 3, 14 and 16, and Requests for Production Nos. 3, 4, 5, 6, 7, 8, 9, 14, 15, 17, 24b, 25, 27, and 28, Acomarit has refused to provide any additional information since the October 18, 2002 hearing. See Plaintiff Saudi's Motion to Strike Defendant Acomarit's Pleadings, Exhibit Q.

6. Despite numerous opportunities to avoid the consequences of his conduct, Acomarit has failed to produce one financial record reflecting payments in any form to Tom Garrett directly or to Garrett's employer, Osprey Acomarit. Garrett's testimony that he provided the original copies of

his bills to Acomarit for reimbursement (without retaining any copies) has now been corroborated by the testimony of William Gibbs, Osprey Acomarit's President at the time it employed Garrett. Gibbs described what he referred to as the "mechanics" of the reimbursement process as follows:

> Q. Yes, the mechanics, how it works?
>
> A. Tom Garrett would presumably submit invoices to Geneva and when those were approved by Captain Bille, the approval would be faxed to Osprey and based on that approval, we would pay or reimburse Tom Garrett for those expenses.
>
> Q. So what you are telling me is, supposedly, whatever he bills, he sent over to Acomarit in Geneva?
>
> A. Whatever he billed, he sent to Geneva.
>
> Q. Do you receive a copy of those?
>
> A. We would receive a copy as I recall of the--what I would call the cover sheet of the expense form and that would have a total at the bottom, and we total the totals of perhaps of five or six or seven at a time of different expense reports.

See Saudi's Second Supplemental Response to Acomarit's Motion to Dismiss for Lack of Personal Jurisdiction, Deposition of William Gibbs, November 15, 2002, P. 35, LL 8-21; P. 36, LL 1-5.

7. Acomarit had possession of the original records of its financial transactions with Garrett while Garrett resided in Pennsylvania and traveled to various Acomarit—managed vessels he attended from his home in Nazareth, Pennsylvania. Either Acomarit is still in

possession of these records or they have been destroyed. Gibbs pointed out in his deposition that Osprey Acomarit, the joint venture in which Acomarit was involved with American Automar, kept its financial records having to do with the Garrett monetary transactions. Deposition of Captain Gibbs, November 15, 2002, P. 28, LL 21; P. 29, LL 1-4, LL 9-21; P. 30, LL 1-8.

8. Recently Acomarit in other litigation has revealed that during the period of time Garrett was acting as Port Captain for Acomarit-managed vessels, Defendant Acomarit Services Maritimes, S.A. "was wholly owned by Acomarit Holdings, Inc. and Acomarit Holdings, Inc. was the company that entered the joint venture with Osprey Acomarit...." This judicial admission is contained in Acomarit's recently-filed "Reply Supporting its Motion and Memorandum of Law to Dismiss for Lack of Personal Jurisdiction" in Saudi's action filed in the District of Maryland and styled C.A. No. Al-02-CV-1722. A true and correct copy of that reply containing Acomarit's judicial admission is attached hereto, marked Exhibit A, and is incorporated by reference.

9. It is now clearer than ever before the Acomarit Holdings, Inc. entered into a joint venture enterprise with American Automar whereby Osprey Acomarit, Inc. would be formed and thereafter utilized to shroud its subsidiary, Acomarit's activities in the United States in hopes of fraudulently avoiding the exercise of personal jurisdiction by the U.S. Courts.

10. When confronted with the fact that Garrett utilized Osprey Acomarit's letterhead while conducting business for the sole benefit of Acomarit (Acomarit Holdings' Subsidiary) Gibbs claimed:

Q. Do you accept that, sir?

A. If it was business that he was doing on behalf of Acomarit Group, sure, I have no problem with that.

P. 46, LL 19-21; P. 47, LL 1-2, Deposition of William Gibbs, November 15, 2002.

11. Why has Acomarit and its counsel failed to produce one financial record showing payment or reimbursement to Tom Garrett?

The simple answer is that their scheme to fraudulent avoid exercise of personal jurisdiction by this Court (and other Courts in the United States) would fall apart if they did so. Production of Garrett's bills or expenditures which Garrett made on behalf of Acomarit would reveal where the purchases were made and under what terms and at what locations the financial transactions were carried out. Production of telephone bills sent by Tom Garrett to Acomarit for reimbursement, or Acomarit's own phone bills reflecting telephone calls to Garrett, would reveal the volume of telephone calls which took place in the State of Pennsylvania at Garrett's home office including fax transmissions. Vendors of services and goods and other third parties whom Garrett dealt with would surface who could not be controlled by Messrs. Nork and Letourneau and would be willing to tell the truth about the extent of Garrett's negotiations and transactions with them on behalf of his clandestine employer, Acomarit.

12. Further, although Osprey Acomarit and American Automar retain records which prove a portion of these financial dealings and claim they have not destroyed them, Acomarit must face the consequences of its own choice to conduct its business in such a manner as to intentionally destroy records which would accurately reflect its financial dealings as well as its connections with the State

of Pennsylvania and with the United States.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL

II.

1. ADOPTION BY REFERENCE --

Saudi incorporates and adopts by reference his previous arguments in the Memorandum of Law in Support of Saudi's Motion to Strike Defendant Acomarit's Pleadings.

2. ABUSE OF DISCRETION NOT TO ALLOW DISCOVERY --

The District Court's discretion in discovery matters is not unlimited. The Trial Court's discovery decision on questions of relevance or compulsion must adhere to the liberal spirit underlying the discovery rules and their purpose and must not impose undue burdens or costs. Williams v. City of Dothan, 745 F.2d 1406, 1415 (11th Cir. 1984). Despite granting the Trial Courts wide discretion in matters of discovery, the Federal Appeals Court will find the District Court abused its discretion if it denies discovery of facts necessary to a fair presentation of the case. Duke v. University Texas, 729 F.2d 994, 997 (5th Cir. 1984). This discretion and its limits described by the Fifth and Eleventh Circuit applies in pre-trial matters in the Third Circuit. Linkstrom V. Golden ~ Farms, 883 F.2d 269 (3rd Cir. 1989) and Kotes Super Fresh Foods Markets, 157 F.R.D. 18, 19, (E.D. Pa. 1994).

3. LOCAL RULES CAN NOT LIMIT SCOPE OF DISCOVERY --

This Court's Local Rules may not excuse the misconduct of Acomarit or its counsel. Local Rules can not narrow the scope of discovery mandated by the Federal Rules of Civil Procedure absent specific authorization contained in the Federal Rules. Chiasson

V. Zapata Gulf Marine Corp., 988 F.2d 513, 517 (5th Cir. 1993).

4. INFORMATION NOT EQUALLY ACCESSIBLE

Even if this Court could condone Acomarit's wholesale destruction of its financial records in a clear effort to fraudulently avoid exercise of jurisdiction by the U.S. Courts, Acomarit would still be bound to obtain the information from its parent company which is controlled by the same corporate offices as those who control Acomarit Geneva or from its joint venturer, American Automar, Inc., or the joint venture itself, Osprey Aconiarit. Acomarit can obtain this information based on its shared business relationship with these other entities. This information is not "equally accessible" to the Plaintiff. RTC Mortgage Trust 1994-S-3 v. Guadalupe Plaza, 918 F.Supp. 1441, 1450-1451 (D.N.M. 1996).

5. ACOMARIT REQUIRED TO ANSWER COURT -COMPELLED INTERROGATORIES EVEN IF DOCUMENTS PROVIDING SUCH INFORMATION WERE INTENTIONALLY DESTROYED --.

This Court compelled Acomarit to answer (or further answer) Plaintiff's Interrogatory Nos. 3, 5, 6, and 14. Interrogatory No. 6 required Acomarit to state, "Exact amount of payments for labor and cost reimbursement which were made to either Tom Garrett or to Osprey Acomarit in relation to Tom Garrett's performance of his duties as

Acomarit's Port Captain from 1995 to the present date."

Interrogatory No. 14 demanded that Acomarit "List and describe by title, name, present address, and present telephone number all persons or entities to which Tom Garrett reported when he attended the S/T Marine Atlantic and any Acomarit-owned and/or managed vessels in the Gulf of Mexico and any and all other U.S. ports and/or territorial waters and indicate the nature and content of such reports and/or discussions between Tom Garrett and Acomarit personnel."

Acomarit answered Interrogatory No. 6, "None." Acomarit gave an evasive answer to Interrogatory No. 14 which did not contain any telephone numbers and did not describe any contacts, reports, or discussions. See Saudi's Motion to Strike Defendant Acomarit's Pleadings, Exhibit 2 and T, P. 4.

6. SAUDI IS ENTITLED TO AN ORDER ENFORCING DISCOVERY AND SHIFTING THE BURDEN OF ACOMARIT'S CONDUCT ONTO ACOMARIT.

The Federal Rules of Civil Procedure guarantee a party access to facts essential to proper litigation. Hickman v. Taylor, 329 U.S. 495, 67 S.Ct. 385. The Federal Rules contemplate that all parties will have knowledge of all facts essential to proper litigation. The Rules must be interpreted and enforced to promote fair resolution of law suits through the elimination of surprise and the establishment of equal opportunities to access of information on which the Finder of Fact will determine the outcome of the suit. Hickman, supra.

CONCLUSION

As previously argued in Saudi's Motion to Strike

Acomarit's Pleadings, Acomarit should be compelled to produce full and complete answers and responses to all discovery previously compelled by this Court including Interrogatory Nos. 3, 6, 14 and Requests for Production Nos. 3, 4, 5, 6, 7, 8, 9, 14, 15, 17, 24b, 25, 27 and 28. Acomarit should be forced to provide the information which its counsel Nork obstructed Saudi from obtaining during the depositions of Janet Saedi, William Gibbs, and Thomas Garrett. If Acomarit has intentionally destroyed records of its financial dealings and telephone contacts with Garrett, it should be made to suffer the consequences of such destruction. This Court should enter an order compelling Acomarit to provide discovery responses in conformity with this motion and impose costs against Acomarit and/or, in the alternative, should enter an order exercising personal jurisdiction over Defendant Acomarit based on its failure to cooperate and comply with discovery.

Respectfully submitted,

_____

Captain Sheriff Saudi
Plaintiff In Propria Persona
5222 Spruce St.
Bellaire, Texas 77401
(713) 668—8815
(713) 668—9402 Fax

CERTIFICATE OF CONFERENCE

This motion is opposed.

_____

Captain Sheriff Saudi

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document was served on Carl D. Buchholz, III, Rawle & Henderson LLP, The Widener Building, One South Penn Square, Philadelphia, PA 19107, FAX (215) 563-2583 and Thomas Nork and Keith Letourneau, 5847 San Felipe, Suite 4600, Houston, Texas 77057, FAX (713) 871-8844 by facsimile transmission and/or United States mail on this the 2nd day of December, 2002.

_____

Captain Sheriff Saudi

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA AT PHILADELPHIA, PENNSYLVANIA

CAPTAIN SHERIFF SAUDI,	§	
Plaintiff,	§	
	§	
VS.	§	NO. 01—4301
	§	
ACOMARIT SERVICES	§	
MARITIMES S.A., ET AL	§	
Defendants.	§	

ORDER ON PLAINTIFF. CAPTAIN SHERIFF SAUDI'S. MOTION TO COMPEL PURSUART TO COURT ORDER DATED NOVEMBER 25, 2002

BEFORE the Court on this the ____ day of _____, 2002, came on to be heard the Motion of the Plaintiff to Compel and the Court, after due consideration of same, is of the opinion that the Motion SHOULD / SHOULD NOT BE GRANTED. It is therefore;

ORDERED that Acomarit SHALL PRODUCE / SHALL NOT PRODUCE full and complete answers and responses to all discovery previously compelled by this Court including Interrogatory Nos. 3, 6, 14 and Requests for Production Nos. 3, 4, 5, 6, 7, 8, 9, 14, 15, 17, 24b, 25, 27 and 28. It is further;

ORDERED THAT Acomarit SHALL provide the information which its counsel Nork obstructed Saudi from obtaining during the depositions of Janet Saedi, William Gibbs, and Thomas Garrett. If Acomarit has intentionally

destroyed records of its financial dealings and telephone contacts with Garrett, it should be made to suffer the consequences of such destruction. It is therefore;

ORDERED that Acomarit SHALL provide discovery responses in conformity with this Order. It is further;

ORDERED that costs against Acomarit SHALL BE TAXED in the amount of $_____. In the alternative, it is further;

ORDERED that the Court hereby finds personal jurisdiction over Defendant Acomarit exists based on its failure to cooperate and comply with discovery.

SIGNED on this the ____ day of _____, 2002.

_____
JUDGE PRESIDING

Appendix G

IN TUE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SHERIFF SAUDI, CAPTAIN	:	CIVIL ACTION
v.	:	
ACOMARIT MARITIMES SERV. S.A.	:	NO 01-4301

ORDER

AND NOW, this 11 th day of March, 2002, upon consideration of pro se Plaintiff's Motion to Compel Answers to Plaintiff's First Set of Admissions, First Set of Requests for Production of Documents and First Set of Interrogatories ("Motion to Compel") (Document No.15), Defendant's Opposition thereto (Document No. 16), it is hereby

ORDERED

1. The Motion to Compel is **DENIED IN PART** and GRANTED IN **PART.**[1]

2. Defendant shall respond to the following Interrogatories, subject to the stated limitations:

---

[1] By Order dated March 5, 2002, the Honorable James McGirr Kelly referred the Motion to Compel to the undersigned for disposition. Relevant to this court's disposition of the Motion to Compel, is Judge Kelly's Memorandum & Order dated February 13, 2002 (Document No. 14), in which Judge Kelly ruled, inter alia, as follows:

> It appears that [plaintiffj has made a reasonable showing that Acomarit may have had an agent for service of (continue……)

Memorandum & Order dated February 13, 2002 at 3-4.

(A) No. 3 - defendant shall identify the name of its records custodian;

(B) No. 5 - limited to vessels docked in ports located in Pennsylvania, and further limited to the time period of January 1, 1998 through the present;

(C) No. 6 - limited to the time period of January 1, 1998 through the present. Also, defendant shall supplement its response as agreed; and

(D) No. 14 - limited to the title and name of such persons and entities, and further limited to the time period of January 1, 1998 through the present.

3. Defendant shall respond to the following Requests for Production of Documents, subject to the stated limitations:

(A) Nos. 3 and 4—limited to the time period of January 1, 1998 through the present. Defendant contends that it produced documents responsive-to Nos. 3 and 4 in the Houston action between the parties. To the extent that the documents produced in the Houston action were identified by number or other label, defendant shall indicate with specificity which documents are responsive to Requests for Production of Documents Nos. 3 and 4 in this action

(B) Nos. 5 though 6 - limited to the labor or

---

[1](....continued) process located in Pennsylvania. Accordingly, the Court will deny Acomarit's Motion to Dismiss without prejudice and allow the parties to engage in discovery, until July 30, 2002, related solely to this Court's personal jurisdiction over Acomarit in the Eastern District of Pennsylvania and whether service of process was properly effectuated.

services of Tom Garrett, or any other individual or entity within the Commonwealth of Pennsylvania, and further limited to the time period of January 1, 1998 through the present;

(C) Nos. 6 through 9—limited to the time period of January 1, 1998 through the present;[2]

(D) Nos. 14 and 15 - limited to vessels in ports located in the Commonwealth of Pennsylvania;

(E) No. 17— limited to". Acomarit employees, officers, directors. independent contractors or agents in the Commonwealth of Pennsylvania.

(F) No. 24(b) - limited to"... any entity located in the Commonwealth of Pennsylvania.

(G) No. 25 - limited to the boundaries of the Commonwealth of Pennsylvania and to ports-of-call within Pennsylvania; and

(H) Nos. 27 and 28 - defendant agreed to search its records for responsive documents. Defendant shall produce any responsive documents it locates.

4. All answers or responses required by this Order, shall be produced by defendant to plaintiff on or before April 15, 2002.

---

[2] In response to these requests, defendant had agreed to search its records for responsive documents.

5. In all other respects, the Motion to Compel is **DENIED.**[3]

BY THE COURT:

THOMAS J.RUETER
United States Magistrate Judge

[3] Defendant contends that plaintiff's Motion to Compel was filed in violation of Fed. R. Civ. P. 26(d) and 33(a). Fed. R. Civ. P. 3 3(a) provides: "Without leave of court or written stipulation, interrogatories may not be served before the time specified in Rule 26(d)." Fed. R. Civ. P. 26(d) provides that a party may not seek discovery from any source until after the parties have met pursuant to Fed. R. Civ. P. 26(f). Defendant also contends that the Motion to Compel is deficient because it does not include a certificate of conference as required by Fed. R. Civ. P. 37(a)(2)(B), or a certification that the parties had attempted to resolve the dispute pursuant to Local Rule 26.1(f).

In his Memorandum & Order dated February 13, 2002, Judge Kelly specifically authorized the parties to engage in limited discovery on the threshold issue of personal jurisdiction. This special grant of authority by the court satisfies the requirements of Fed. R. Civ.P.33(a). While the Motion to Compel does not include the certifications contemplated by Fed. R. Civ. P. 37 and Local Rule 26.1(1), this court finds from the pleadings currently before it, that the pro se plaintiff and the defendant are unable to resolve the discovery disputes without court intervention. Further delay will only hinder the efficient and appropriate handling of this case.

Appendix H

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNYSALVANIA

CAPTAIN SHERIFF SAUDI,	:	CIVIL ACTION
Plaintiff	:	
	:	
V.	:	
	:	NO. 01-4301
ACOMARIT MARITIMES.	:	
SERVICES, S.A	:	
Defendant	:	

ORDER

And now, this 18th day of October, 2002, following a hearing and upon consideration of all outstanding motions, it is hereby ORDERED as follows:

1.That Defendant's Motion to Strike Plaintiff's Pleadings (Doc. 41) is DENIED.

2.That Plaintiff's Motion to Strike Defendant's Pleadings (Dcc. *50)* is DENIED.

3.That Plaintiff's Motion to Extend Time Within Which to Take the Deposition of William Gibbs (No. 47) is GRANTED subject to the following conditions:

a. Plaintiff shall depose Gibbs no later than November 18, 2002.

b. Gibb's deposition shall be limited to issues regarding Defendant's jurisdictional contacts with this District and to the time period of January 1,1998 through May 17, 1999.

b. Plaintiff shall comply with the Federal Rules of Civil Procedure in the issuance of a subpoena and service of process on Gibbs.

c. Gibbs shall be served with a subpoena one week in advance of the deposition date, and defense counsel shall be given one week's advance notice of the date, time, and place of the deposition.

4. That within two weeks after Gibbs' deposition, Plaintiff shall file in this Court a brief discussing jurisdictional issues arising from Gibbs' deposition as well as any other matters bearing on jurisdiction which may have arisen as a result of any additional documents that Defendant may have furnished Plaintiff after the date of this Order. Defendant shall have one week to respond.

5. That Plaintiff shall file a brief in this Court stating his position on the first-filed rule and multi-district litigation under 28 U.S.C. § 1407 no later than November 25, 2002, and Defendant shall have one week to respond.

6. That Plaintiff shall be allowed to file one Motion to Compel the Production of Documents no later than November 18, 2002, subject to the following conditions:

a. That Plaintiff shall have communicated promptly with defense counsel as to those documents previously requested and which Plaintiff asserts are in Defendant's possession, custody, or control but which have yet to be produced.

b. The Motion shall be limited to documents regarding Defendant's jurisdictional contacts with this District and to the time period of January 1, 1998 through May 17, 1999.

BY THE COURT:

_____

MICHAEL M. BAYLSON, U.S.D.J

Appendix I

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

CAPTAIN SHERIFF SAUDI,	§	
	§	
Appellant,	§	
	§	
VS.	§	CASE NO. 03-1609
	§	
V. SHIPS SWITZERLAND	§	
A/K/A ACOMARIT SERVICES	§	
MARITIMES S.A.	§	
	§	
Appellee.	§	

APPELLANT, CAPTAIN SHERIFF SAUDI'S, MOTION TO TAKE JUDICIALNOTICE PURSUANT TO RULE 201(f) F.R.E.

PURSUANT to Rule 201(f) of the Federal Rules of Evidence, Appellant, Captain Sheriff Saudi, ("SAUDI") moves this Court to take judicial notice of official Court proceedings involving Appellees which occurred subsequent to the entry of Judgment by the United States District Court for the Eastern District of Pennsylvania, Philadelphia Division, and, in support of said motion, would show the following:

THE NEED AND RELEVANCE FOR TAKING OF JUDICIAL NOTICE OF SUBSEQUENT PROCEEDINGS

I.

1. Rule 201(f) F.R.E. states judicial notice of adjudicative facts may be taken ". . .at any stage of the proceedings...."

2. In the present case, Appellees obtained a dismissal for alleged lack of personal jurisdiction based on District Judge Baylson's reliance on Acomarit's claims in discovery that it was "not withholding documents." Saudi v. Acomarit Maritimes Services, S.A., 245 F.Supp.2d 662 (E.D.Penn., 2003).

3. Saudi's Motion to Compel Discovery of Expense Records showing Acomarit's employee's, Tom Garrett's, geographical location for payments and operations in Pennsylvania and United States was denied based on the District Court's observation:

Regarding Plaintiff's specific request for

> **documents, Acomarit noted that it had responded to all such requests and provided all of its responsive documents to the Plaintiff. . . .Where such documents were in its possession and within the scope of the Court's Order, Acomarit represents it has provided such documents. In all other cases it has answered such questions "none."**
>
> **Despite its insistence that Acomarit has not reproduced documents in its possession, Plaintiff has not produced any evidence to prove that Acomarit is withholding documents.**

The District Court's opinion ignored the prior Motion to Strike Pleadings filed by Appellant. Saudi which is before this Court on appeal. Saudi moved to strike Acomarit's pleadings due to discovery abuse based on Acomarit's complete failure to produce full and complete records concerning its telephone contacts and correspondence with Tom Garrett, its employee port captain who resided in the State of Pennsylvania during the time period he worked for Acomarit`1

4. Saudi's Motion to Strike Pleadings sought sanctions for destruction of records and failure to comply

with discovery. Acomarit never informed the District Court that it had destroyed the records which were not produced.

5. The District Court below simply took Acomarit's statement that it had no records other than those that it produced and, without more, dismissed the Plaintiff's case and, in effect, rewarded Acomarit for what has been since proven to be a policy of selective destruction of pertinent records in a calculated effort to avoid both jurisdictions in United States Courts, as well as liability.

---

1. Acomarit did produce a few grossly incomplete faxes reflecting payments and reimbursements to Garrett. Acomarit never explained why the faxes it did produce were incomplete or why Acomarit could not produce the documents it was ordered to produce by the District Court in its Order to Compel.

DOCUMENTS AND MATTERS WHICH SHOULD BE JUDICIALLY NOTICED

II.

1. As a result of the dismissal in the Pennsylvania District Court, Saudi was forced to file another suit before the United States District Court for the Eastern District of New York. Captain Sheriff Saudi vs. Marine Atlantic, Ltd., Case No. 02-CV-2495(JG), (E.D.N.Y. Brooklyn Division). During the course of those proceedings, a Federal District Court once more entered an order against Appellee Acomarit (now calling itself V Ships Switzerland) which ordered Acomarit to produce its records. Attached hereto and submitted herewith for purposes of the taking of judicial notice are true and correct copies of proceedings before the United States District Court for the Eastern District of New York in Case No. 02—CV—2495 (JG), Captain Sheriff Saudi, Plaintiff, v. V Ships Switzerland a/k/a Acomarit Maritimes Services, S.A., Defendants, Et Al, before the Honorable Magistrate Lois Bloom as follows:

Exhibit A, Transcript of April 22, 2003 Hearing, 42 pages; Exhibit B, Transcript of Hearing dated June 10, 2003, 31 pages; Exhibit C, Transcript of hearing dated July 23, 2003, 32 pages, and Exhibit D, oral deposition of Appellee Acomarit's General Manager, Jacques Louis Bille dated March 27, 2003, 51 pages. Exhibits A, B, C, and D, impeach the credibility, as well as the completeness, of Acomarit's discovery responses relied on by District Judge Baylson in denying Saudi's Motion to Strike Pleadings and later filed Motion to Compel. Judge Baylson ruled not only on Pennsylvania long arm jurisdiction but, also, nation-wide jurisdiction under Rule 4(k)(2) of the Federal Rules of Civil Procedure. Any telephone calls to Acomarit from the United States and from Acomarit to the United States, including those made by its agents or employees, were relevant to Judge Baylson's inquiry.

2. In Exhibit A, Transcript of April 22, 2003 hearing, in colloquy beginning at P. 7 and ending at P. 11, Mr. Nork, Acomarit's counsel before this Court, clearly

admits that no telephone records were ever requested. Otherwise, he would have informed the Court that the records had already been requested in the Pennsylvania case before District Judge Baylson.

3. In Exhibit B, transcript of hearing on June 10, 2003, Judge Bloom observed on P. 22 and 23:

THE COURT: Well, during the deposition it was stated that the only way that you were gonna get the information---that Echo Merit [sic] possesses no information, that the telephone service provider was Swiss Corn and that when Plaintiff deposed Solzer [sic] and Billay (sic), they stated that Swiss Com will not provide the records unless Echo Merit [sic) asked for them.

MR. NORK: Which they did.

THE COURT: And for Echo Merit [sic] to say that they possess no information, meaning that they have not kept any records of their phone service and what they've paid for just belies, you know, good business practices. How could you have no records of your phone service from the past eight years?

MR. NORK: **I don't know that they don't, Your Honor.**

Exhibit B, PP 22, LL 15—25; p. 23, LL 1—9.

4. In Exhibit C, Transcript dated July 23, 2003, Saudi placed Acomarit and its counsel on clear notice that

their representations before the Eastern District of New York might be brought before this Court for consideration. Exhibit C, Transcript of hearing dated July 23, 2003, PP 3 and 4.

5. In Exhibit D, the oral deposition of Jacques Louis Bille, Acomarit's General Manager, taken in the New York proceeding, Bille admitted that Acomarit agents and employees when they traveled used a cell phone. Exhibit D, P. 19, LL 1-13. Swisscom provided Acomarit's celi phone service in the Republic of Switzerland which would have been utilized to call the United States. Exhibit D, P. 19, LL 18-25. Acomarit never requested a detailed statement during any of the relevant years at issue involving Tom Garrett, its port captain. Exhibit D, P. 20, LL 3-7. Bille answered the interrogatories in the New York case which he swore to only "under information and belief" without looking at any records. Exhibit D, P. 25, LL 1-8. Bille answered the interrogatories in the New York cases concerning the telephone billings and charges without ever going back to Swisscom in an effort to get records. Exhibit D. P. 28, LL 13-16. Bille

stated under oath that Acomarit's records concerning reimbursement to Thomas Garrett, including original receipts, copy receipts, and "whatever" would be kept for a period of three years. Exhibit D, P. 30, LL 4-25; P. 31, LL 1-10. When the records are destroyed, Acomarit incinerates them. Exhibit D, P. 40, LL 1-11. Bille stated that Acomarit had not kept any records on Tom Garret and that they were incinerated because they were "too old." Exhibit D, P. 41, LL 1—14. Acomarit was aware of Saudi's injuries on the vessel that it technically managed, the S/T Marine Atlantic, almost immediately when the injuries happened on May 13, 1999. Exhibit D, P. 43, LL 14-21.

6. All of the evidence in the subsequent proceeding before ~the Eastern District of New York, when taken together, establishes that Acomarit destroyed evidence relevant to its jurisdictional claims and made no effort to preserve such records after it was clearly aware that it was subject to legal action and suit. This subsequent evidence proves that Acomarit's answers to discovery were evasive

and incomplete and that Saudi's Motion to Strike Pleadings and Motion to Compel should have been granted and Acomarit's Motion to Dismiss for Lack of Personal Jurisdiction denied.

7. Moreover, Acomarit had a joint venture agreement with American Automar located in Maryland for approximately five years commencing in 1995 and ending in 1999. Acomarit could have obtained copies of the requested records from its joint venture partner, but failed to do so. In a hearing before Judge Baylson where Captain Saudi requested records from American Automar and Osprey Acomarit, the Judge said that he did not have jurisdiction in Maryland to compel the requested records from American Automar.

LEGAL AUTHORITY IN SUPPORT OF JUDICIAL NOTICE OF SUBSEOUENT FACTS AND LEGAL PROCEEDINGS

III.

Where a Defendant's sworn answers to interrogatories are evasive and incomplete within the meaning of the Federal Rules of Civil Procedure, such

answers and responses should be treated as no responses or answers at all. Alliance To End Repression v. Rochford, 75 F.R.D. 438 (E.D. Ill., 1976). Rule 37(a)(3) F.R.Civ.P. The exhibits tendered with this Motion to Take Judicial Notice clearly prove that Acomarit engaged in post-litigation destruction of evidence relevant to Acomarit's jurisdictional claims. The Federal Courts have the inherent power to punish pre-litigation spoliation of evidence, as well as post-litigation, either under Rule 37 F.R.Civ.P., or their inherent power. In the New York case, Acomarit admitted that it had never made any attempt to get its phone records from its service provider Swisscom during the Pennsylvania proceedings which are on appeal before this Court despite that Court's order to compel. Further, if Acomarit's counsel are to be believed, counsel is only aware of whether or not Acomarit had any of its phone records pertinent to the years at issue in the Pennsylvania case when counsel filed discovery papers from Acomarit claiming that no phone records existed. Further if Acomarit and/or its counsel were

telling the truth to the Pennsylvania Court concerning the extent of records which existed concerning Tom Garrett's payments, expenses, and reimbursements, Acomarit's statements in the New York case, i.e. that all records were destroyed pertaining to Tom Garrett, do not explain how Acomarit came up with the incomplete faxes respecting reimbursement of partial incomplete pages, which were produced in front of District Judge Baylson below, in an apparent token effort to mislead the Court into thinking some sort of good faith compliance had been made. Garrett terminated his employment with Acomarit in January/February, 1999. Based on Bille's claim that three years were preserved, Acomarit had records pertaining to Garrett dating back to 1996 when Acomarit learned of Saudi's accident on May 17, 1999. Acomarit was sued July 22, 1999, and the records pertaining to Garrett which predated Acomarit's knowledge of Saudi's injury dating back to at least 1996, should have been preserved for litigation. Acomarit violated clear duties to preserve relevant evidence and sanctions were

mandatory. Sanctions-- Spoliation of Evidence 156 F.R.D. 313.

This Court of Appeals, like many others, follows the general rule that subsequent legal proceedings between the parties are not subject to "judicial notice." As this Court stated in Landy v. Federal Deposit Ins. Corp., 486 F.2d 139, 150—151 (3rd Cir. 1973):

> Normally, a Court of Appeals will consider only the record and facts considered in the District Court, but the appellate court has the right in a proper case to take judicial notice of new developments not considered by the lower Court.

This Court recently held consistent with Landy in In Re Indian Palms Assocs., Ltd., 61 F.3d 197, 205—2—6 (3rd Cir. 1995). This Court's recognition of its right to take judicial notice to prevent injustice and fraud has been predictably echoed in other Circuits. Barr Rubber Products Co. v. Sun Rubber Co., 425 F.2d 1114 (2nd Cir. 1970); Zell v. Jacoby-Bender, Inc., 542 F.2d 34 (7th Cir. 1976). Based on Acomarit's misrepresentations, the decision of the lower Court lacks propriety. International Bro. of Teamsters,

Chauffeurs, Warehousemen and Helpers of America v. Zantop Air Transport Corp.., 394 F.2d 36,40 (6th dr. 1968). Acomarit's subsequent admissions establish that it failed to properly answer discovery before the District Court below. French v. The Chosin Few. Inc., 173 F.Supp.2d 451 (W.D.N.C. 2001).

CONCLUSION

Based on all of the above facts, this Court should grant Appellant's Motion to Take Judicial Notice and should utilize Exhibits A, B, C, and D to determine the merits of this appeal.

Respectfully submitted,

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CERTIFICATE OF OPPOSITION

This motion is opposed.

Joe Alfred Izen Jr.

CERTIFICATE OF SERVICE

I, Joe Alfred Izen, Jr., certify that a true and correct copy of the foregoing document was sent to Thomas R. Nork and Keith B. Letourneau, 5847 San Felipe, Suite 4600, Houston, Texas 77057/Carl D. Buchholtz, III, The Widener Building, One South Penn Square, Philadelphia, PA 19107 by facsimile transmission and/or U.S. mail, postage prepaid, on this the 19th day of April, 2004.

_____

Joe Alfred Izen Jr.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CAPTAIN SHERIFF SAUDI,	*	Case No. 02-CV-2495(JG)
Plaintiff,	*	Brooklyn, New York
v.	*	April 22, 2003
MARINE ATLANTIC,	*	
LTD., et al.,	*	
Defendants.	*	

* * * * * * * * * * * * * * * * * * * *

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE BEFORE THE HONORABLE LOIS BLOOM UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

(Proceedings commenced.)

THE CLERK: Civil cause for telephone conference, docket no. 02-CV-2495, Saudi versus Marine Atlantic, et al. If the parties would please state your names for the record.

MR. UNGER: Mike Unger, local counsel for the defendant.

MR. NORK: My name is Tom Nork. I'm counsel for the defendant. I'm in Houston, Texas.

MR. IZEN: Joe Alfred Izen, Jr. I'm the attorney for the plaintiff, Sheriff Saudi.

THE CLERK: The Honorable Lois Bloom presiding.

THE COURT: Good morning, everybody. Mr. Unger, Mr. Izen, Mr. Nork. Did I miss anybody? Okay.

I have to say everybody has good counsel on this case because I read the first set of papers that came in from you, Mr. Nork, and I thought it sounded very reasonable.

And then when Mr. Izen's papers came in and I read it, I thought his papers sounded very reasonable. And then I went back and I find things in both of your papers that somewhat after looking at it closer, are disturbing, but I wish that all the good lawyering in this case would go towards settling this action, instead of fighting over where the right place for the action is.

With that being said, this conference was scheduled at defendant's request. Defendant was served with 330(b) (6)

notices by plaintiff to take depositions and defendant has requested that these deposition notices be quashed, and then there are some other issues that have come up.

Again, I'm going to start with the Nork letter. Mr. Nork, you are the author of the letter?

MR. NORK: Yes, Your Honor.

THE COURT: The April 16th? Okay.

So first of all, with the deadline set for May 16th, there was no problem in getting these notices in April. You're just objecting that it's burdensome and that there should be no further discovery, and then you're positing on page 2, under paragraph 2, you say that Mr. Letourneau made it clear that although defendants had voluntarily produced the witnesses for the March 27th depositions, they would not act voluntarily should plaintiff attempt to take further depositions of representatives regarding jurisdictional issues.

Rather, defendants would require that plaintiff comply with the applicable International Convention. What do you think that plaintiff has to do in order to get these depositions, sir?

MR. NORK: Well, Judge, the plaintiff would have to adhere to Rule 28 --

THE COURT: I've looked at Rule 28(b) and I've looked at the case law. What is the applicable International Convention that plaintiff must comply with?

MR. NORK: It's the Hague Convention on Evidence.

THE COURT:I know. But the Hague Convention says, and there's case law from the Supreme Court, that says a letter of request may be enough.

MR. NORK: That's right. A letter of request is fine. The problem with Switzerland is, Judge, that it's a civil state as you know, and all the discovery is handled by the government.

And an intrusion by an outsider, like a lawyer like myself or Mr. Izen trying to conduct discovery in Switzerland is, in essence, an intrusion on its sovereignty.

So it's a complex -- not complex, necessarily, but it's a process whereby the Swiss authority, pursuant to its being a signatory to this convention, will have to work out a way that one of its citizens can be allowed to be interrogated by a non-governmental person.

That's what we attempted to short circuit by voluntarily getting these witnesses available.

THE COURT: Well, France's separate issue -- one of these depositions that you had previously scheduled was from France, even though the company was from Switzerland corr?

MR. NORK: Right, Judge. The reason we did that is so that these folks could be free to not violate Swiss law. That they could be in France and be free to be asked any questions about jurisdiction or anything else for that matter.

And quite frankly, Judge, we went through a lot of time and effort to set this up.

THE COURT: I understand that. I'm just asking you what you would believe Mr. Izen would have to do in order to get these people to sit for a 30(b)(6) because again, as I'm saying to you, I have looked at what the Supreme Court has said and, again the Supreme Court has said that first resort to the Hague Convention is not required.

Now, of course, you can't require these defendants, if the Hague Convention applies, especially when -- and I should have started with this -- we're supposedly limited to jurisdiction.

Jurisdiction having not been established, I am not going to drive this as hard as I would drive it if jurisdiction was not at issue.

MR. NORK: Well, Judge, here's something that may short circuit this analysis slightly, and if not, then I stand corrected.

The 30(b)(6) witnesses that we would furnish are the very people that have been deposed.

THE COURT: Well, let me tell you what my problem is, Mr. Nork. I find it completely unrealistic that you were unable to turn over phone records when requested. I just find that to be unbelievable. And that there's now an issue of whether or not they're in your possession or they're in the

possession of SwissComm, well, it's clear that you could have authorized SwissComm to turn over these records to you for you to produce them to Mr. Izen.

That, to me, was his biggest point that scored. I don't understand why you would have gone through all of this and not turned over phone records. If there are no records that apply to conversations between New York, so be it.

But if there are, I don't think that you have the authority to turn off the request by basically saying that you find nothing to be relevant within the request.

And again, I'm being very specific as to his requests. And the telephone records, this is in your supplement to the interrogatories -- this is supplemental answers, and it was submitted by Mr. Unger, but it doesn't really matter, and it basically says "Without waiving the foregoing objections, Acomarit Services Maritime, S.A., possesses no information. Acomarit's telephone service provider during the time period March, 1997 through March, 2003 was SwissComm."

And then, of course, when Mr. Izen goes to SwissComm, he's told that they can't release the records without your authorization. So this is completely jumping through hoops, as far as I'm concerned.

MR. NORK: Well, Judge, that's certainly not our intention.

THE COURT: Well, okay. I'm ordering you to produce those records.

MR. NORK: Judge, we don't have any. We don't have any telephone records that show --

THE COURT: I'm telling you to get them from SwissComm. It didn't say anything about New York in the request. It says, "From the State of New York from February, 1994 to present." There's no phone call from the State of New York.

MR. NORK: There's no phone calls from the State of New York to Acomarit either.

THE COURT: Or Marine Atlantic or Monte Cristo.

MR. NORK: Well, I don't know about Marine Atlantic and Monte Cristo. It's quite possible that Robert Hamshaw may have made phone calls from New York on Marine Atlantic business, but he has -- I'm not quite sure what he has, as far as his phone records go. I think he may have testified that he simply doesn't keep them.

MR. IZEN: May I be heard, Your Honor?

THE COURT: Yes, Mr. Izen.

MR. IZEN: That's not correct. Robert Hamshaw testified in a deposition, a copy of which or portions or which are there attached to my letter that I had to dig out that he talked at least every two months to someone over there in Switzerland.

Now, I think he understates rather than overstates every time during his deposition what he's got. So how Mr. Nork could claim he doesn't know what Mr. Hamshaw said is a mystery to me since Mr. Hamshaw's the one he got the records from.

MR. NORK: Well, Judge, here's where I coming from in this whole dispute. And the reason I sent the letter was on account of these depositions. As far as the phone records go, Judge, I'll ask Acomarit to request from SwissComm whatever you order. We'll be delighted to do that.

I'll ask Mr. Hamshaw for Marine Atlantic Limited and Monte Cristo to request from his phone service provider whatever you wish and order him to do. We'll be delighted to do that.

But our responses in our discovery -- my client's response in the discovery is quite accurate. As far as phone records that Acomarit has, they've responded they don't have any information because they don't make calls to and from New York.

MR. IZEN: May I be heard again, please, Your Honor.

THE COURT: Yes, you may, Mr. Izen.

MR. IZEN: At the conference which took place when I informed these gentlemen, these counsel, that the discovery responses, the first answers to interrogatories and request for production responses were inadequate.

I was met with a claim by these gentlemen that their client had nothing in their possession; informed these gentlemen that the rules require that they make diligent efforts to acquire the records that were under their control from the contractual parties.

Three weeks later or so after that conference took place, I finally got the supplement served and, again, I had the same problem.

Now, again, they're just jacking the plaintiff around.

MR. NORK: That's not true, Judge.

MR. IZEN: They know -- they've got to know having been experienced litigants, as the counsel for litigants, that they have to produce what they can produce based on contractual relationship with the third party.

THE COURT: Well, again, Mr. Izen, they're now saying that they will get on behalf of the three different defendants here the phone records to you.

MR. IZEN: And they don't get to decide what's relevant themselves.

THE COURT: I agree.

MR. IZEN: That's very dangerous.

THE COURT: Mr. Izen, I agree. I'm telling them to turn over the phone records. I'm not telling them to turn over the phone records that they think are relevant.

Again, it shouldn't be that difficult. It's records that are kept in the ordinary course. It's not saying, again, that you're going to find things that meet your needs, but I will order them to turn over the phone records.

And the phone records should show whether or not there were calls made between that company and New York. Period. End of story.

So how long will that take to accomplish, Mr. Nork?

MR. NORK: Judge, I don't know. I'll, as soon as this phone conference is done, e-mail and telephone Mr. Hamshaw regarding Marine Atlantic Limited and Monte Cristo and also Mr. Mark Thompson in Geneva regarding Acomarit.

THE COURT: Again, I want the detailed statements. I do not want them to be things that you're just basically going to say we've reviewed SwissComm's records and they show no calls between the company and New York.

MR. NORK: Judge, I understand exactly what you want, at least I think I do. I'm going to ask these gentlemen to immediately request from their phone provider, SwissComm and Acomarit, I presume Bell Telephone of New York or whatever it is up there on the other two entities and get records.

Now, these will be the phone records that go back -- a look back period of like I guess until 1997, five years.

THE COURT: Well, again, wasn't it 1994 that was requested, sir?

MR. IZEN: Yes, it was.

THE COURT: Why is 1997 unreasonable?

MR. NORK: Well, Judge --

THE COURT: When was the sale of the vessel?

MR. NORK: Judge, that's your call on what's reasonable or not.

THE COURT: I understand. I'm asking the question when was the sale of the vessel?

MR. NORK: 1994.

THE COURT: 1994 it is then. Okay.

MR. NORK: All right, Judge.

THE COURT: So from January, 1994 and, again, the other issue -- Mr. Nork, I'm still going to get there. I'm just trying to get through the things that I thought in reading -- there was excerpts of the Hamshaw deposition saying that records were sent to the custodian of records, Surrendor Atiele (phonetic), and that's part of the reason why I believe Mr. Izen is looking to have a deposition. What about those records? This is Exhibit J to Mr. Izen's letter to the Court.

MR. NORK: I think Mr. Hamshaw made a mistake, Judge.

MR. IZEN: Your Honor, may I be heard?

THE COURT: Well, let Mr. Nork finish and of course, Mr. Izen, I'll let you be heard. Go ahead.

MR. NORK: I took the opportunity when in Geneva to

visit with Mr. Atiele and I asked him whether Mr. Hamshaw had given him any documents about -- in connection with any travel that Hamshaw made on behalf of the company, or expense reports that by nature, and Atiele said no, that Hamshaw must have, in the heat of the moment, misspoke and I'd be delighted to clear that up with an affidavit from each gentlemen.

THE COURT: But what that's going to lead to is me believing Mr. Izen that he needs these depositions because, again, you saying that there was a mistake made in the heat of moment and you wanting to answer your own questions in an affidavit, again, I'm not trying to broaden the scope. I understand the burden and expense of litigating this matter.

What I'm trying to do is get Mr. Izen and his client a fair shake at trying to establish jurisdiction in the Court.

MR. NORK: Right, Judge.

THE COURT: And, again, for you to say that Mr. Hamshaw must have made a mistake and wanting to give me the affidavit that you get to prepare of Mr. Atiele, that doesn't suit me.

MR. NORK: Well, how about this, Judge. How about the fact that Mr. Hamshaw was able to be deposed and asked all these questions?

THE COURT: But he said that there were records and he said that those records were given to Mr. Atiele. So, Mr. Izen --

MR. NORK: But, Judge, the follow up on that is that Atiele, on behalf of Marine Atlantic Limited and presumably Monte Cristo, was asked for such documents and his discovery response was none. He does not have them. So that's, in essence, the answer.

MR. IZEN: Your Honor, may I be heard?

THE COURT: Yes, Mr. Izen.

MR. IZEN: That is completely outrageous to me. The state of the record is as follows. Acomarit answered discovery responses, Marine Atlantic Limited answered discovery responses, so does Monte Cristo. They say they have no records in their possession.

And then we find out that there's a custodian of records named Surrendor Atiele, from Marine Atlantic Limited and Monte Cristo, and the finger points over to Mr. Atiele.

I'm told Mr. Atiele's not going to agree to be deposed. He's going to stand on his rights.

Well, I'm telling you this. The plaintiff stands on his rights under 30(b)(6). We served Marine Atlantic Limited and Monte Cristo with process. They're parties before this court.

Now, they need to quit hiding the ball and they need to get the records in here. And there's a need for discovery of the destruction of the records, just as I told Judge Gleeson, because they were sued back in 1999 down in Houston.

How, they were on notice at least since '99 that all these records may be needed. And the fact that they didn't have -- they don't have any records, what happened to them?

And if a party destroys the records as a sanction, the Court can find jurisdiction. And that's been cited before over and over again. So I don't know what these Swiss clients want to do. They want to pin their people who are studiously ignorant about what happened to the records.

And they're not that cooperative, as Mr. Nork would suggest. They resent being brought in for deposition. There's all kinds of problems.

MR. NORK: Your Honor, may I --

THE COURT: So I'm afraid we must rely on the corporations and their responsibility as parties to produce for us the people we designated who have the knowledge of those items that we designated.

THE COURT: Mr. Nork.

MR. IZEN: Thank you.

MR. NORK: Your Honor, in Texas, state practice when a plaintiff doesn't get the answers to discovery he desires, suddenly it turns into a destruction of records argument. I'd simply point that out.

We will be delighted to get the records that you wish us to get and I will work on that immediately.

We had advised our clients that they did not have a

duty to seek records from the phone providers. And if we erred in that advice, then so be it. I take responsibility for it, but we will do it.

We're mixing apples and oranges on these 30(b)(6) deposition notices. Surrendor Atiele is a -- how best to describe it -- manager of the vessel, whereas, Acomarit is the operator.

Surrendor Atiele reviews billing information, in essence, for these owners of the ship.

THE COURT: How long has Surrendor Atiele been employed by Acomarit?

MR. NORK: Well, he's not employed by Acomarit, Your Honor. He is employed - well, he's self employed, but he has, I presume, a contract relationship with the owners of this vessel who are merely investors.

THE COURT: So how long has he been a contract --

MR. NORK: I want to say it's been -- it's not from inception in 1994. By that I mean, the beginning of the ownership of the vessel by these particular owners, but it might be. But I just don't know. I want to say at the very least --

THE COURT: And Mr. Atiele is the Swiss citizen?

MR. NORK: He is a Swiss citizen, but his company is called scope management. He is not a party.

THE COURT: But he's employed on this

vessel and it's his job to keep the records regarding this vessel.

MR. NORK: Correct. And what he has done, Your Honor, he has signed the interrogatories --

THE COURT: That were prepared by you.

MR. NORK: He signed the affidavit, or verification page rather, on behalf of Marine Atlantic Limited and Monte Cristo. I mean, we have not hidden the ball in this. We have identified Mr. Atiele from day one and explained that he is this gentlemen who runs Scope Management --

THE COURT: Let me ask Mr. Izen, why didn't you notice him instead of the other two people, Mr. Izen?

MR. IZEN: Why not go to him?

THE COURT: Instead of the Captain Bill and --

MR. IZEN: Acomarit. Captain Bill and Georgie Osulzer (phonetic) are Acomarit, and Surrendor Atiele did not keep their records. The status of the records, to answer your question -- and it's proven out by deposition of Georgie Osulzer and Jacques Biele, which were taken by telephone, and Robert Hamshaw's deposition, I represent to this court affirmatively that the deposition testimony of Georgie Osulzer, who's the chief executive officer of Acomarit and Jacque Biele is that they don't have a custodian of records for Acomarit that's outside the company. The records are kept on the grounds in the company.

Now, Surrendor Atiele is the paid records custodian

for Marine Atlantic Limited and Monte Cristo. And when I asked Mr. Hamshaw, and I think the deposition testimony is there for you to review his answer on it, he said that the custodian of records of Marine Atlantic Limited and Monte Cristo was paid a fee and it was paid a management fee and now that management fee and a portion of that management fee went to him being the custodian of records.

That's the status of the case and the custodian of the records, according to Mr. Nork, wanted to stand on his position as a Swiss citizen, was hostile to giving any deposition --

THE COURT: Mr. Izen.

MR. IZEN: -- even though he had signed the interrogatories, as Mr. Nork has pointed out, we must rely on 30(b)(6) and the duty of a corporation party that's a foreign defendant -- and I'll be happy to brief it for the Court if the court wants me to, to give discovery on the jurisdictional issues.

We're not dragging people in who are third-party witnesses. We're asking the corporation to give us the knowledge concerning his direct --

THE COURT: But, Mr. Izen, my question is, again, why didn't you notice him, whether or not you had to go through the rigormorole because he was a Swiss citizen.

MR. IZEN: I did not notice him. I understood that

he would argue that he could not be produced as a witness and so I simply noticed the corporations to produce the information that he would give me.

THE COURT: No, I'm saying in round one. Round one where you got Osulzer and Biele who I understand did not have the information or did not, as you said, made themselves purposefully ignorant as to the information.

But again, I'm trying to get at if Surrendor Atiele -- and I'm not really interested in going off on the sideline of the destruction of documents. That's not really what the Court -- this was supposed to be a limited inquiry as to the jurisdiction of this court.

If I knew that I had jurisdiction -- if this Court, it was clear had jurisdiction, then, Mr. Izen, these matters would be, as you say, much easier for the Court to deal with.

MR. IZEN: Well, Your Honor, there's actual authority -- I'm sorry I'm interrupting, but with your permission --

THE COURT: There's actual authority for when there's a year-long battle? Again, this started a year ago, sir, and this has been set as a deadline for May 16th, which I understand I can change that deadline and I can make you go through whatever it is, because I don't think that I can waive whatever the Hague Convention provides if they're going to stand on their rights to be produced only through the process

in Switzerland, Mr. Izen.

MR. IZEN: Let me say this. I will do whatever the Court wants, and there is discretion. But I'm familiar with authority cited Aerospacial that has to do with the issue you just brought up, and that is what if jurisdiction has not been established.

THE COURT: But I have Aerospacial in front of me, sir. So where is it in here.

MR. IZEN: Well, there are cases citing Aerospacial that talk about what happens when a foreign party is sued; jurisdiction has not been established. They're attempting to take jurisdictional discovery and you're in a situation where you need depositions and the foreigners or whoever are resisting the discovery.

THE COURT: But again, sir, in page 4 of your letter brief to the Court where you cited to Aerospacial and you cited to other cases such as a District of New Jersey case and Eastern District of New York case, again, you're not saying in any of those cases -- it's clear that the defendant's have the burden to prove why the plaintiff must resort to the convention in order to obtain discovery but although it's unclear --

MR. IZEN: Your Honor, if you'll give me just a moment.

THE COURT: Although it's unclear that Mr. Nork would

be representing Mr. Atiele, since he is not -- it appears he is not a party or employed by a party, although he may have a contract relationship with a party.

MR. IZEN: Yes, Your Honor. You're questioning the issue of control over Mr. Atiele.

THE COURT: That's correct.

MR. IZEN: And I will say that we will abide by the Hague Convention, if that's what the Court orders, and I would request additional time to do so to get the deposition, if I can't find out what happened to these records any other way.

But let me draw your attention to International Civil Litigation, United States Court, the third edition of Kluwer Law International, a very esoteric book on foreign jurisdiction.

On page 919 it cites Aerospacial and it talks about jurisdictional discovery. And it says, "As described above, U.S. courts have frequently ordered litigants to make so-called jurisdictional discovery for the limited purpose of determining whether it's subject to personal jurisdiction."

If jurisdictional facts are located in a Hague Convention signatory state, its first use or exclusive use to the Convention requires (inaudible) Aerospacial's emphasis on the fact that French defendants were conceitedly subject to the district court's jurisdiction.

Lower courts are divided on the question of whether

jurisdictional discovery must proceed under the Convention." It says "Compare Genco Martech International with a Westlaw site in the Eastern District of Louisiana requiring use of convention and foreign defendant disputes U.S. jurisdiction with Rich vs. Kitts California Incorporated, 121 FRD 254" --

THE COURT: Mr. Izen, excuse me. Mr. Izen, first of all, if you want me to look at something, you'll make a copy of that page of that esoteric horn book that you're referring to and you'll fax it to my chambers.

MR. IZEN: Yes, Your Honor.

THE COURT: Second, when you're referring me to district courts in Louisiana and the like, I'm afraid that that's not going to be second circuit specific enough for me. But again, I will be glad to look at it.

What I'm thinking, gentlemen, is that one, both of you have made some points. Mr. Izen, I do think that some of your requests were overly broad. I do think that this was supposed to be a limited inquiry. I'm not going to get into this shouting match about who took what time and whether the time was reasonable, but I do think that if there's one more deposition that you think you need to take -- I don't know about all three because what are you going to hear?

MR. NORK: Your Honor?

THE COURT: Yes.

MR. NORK: This is Tom Nork.

Two points to make. One is I hear Mr. Izen talking about records and information.

And one of the things we've tried very hard to do is pursuant to Judge Gleeson's suggestion, and perhaps yours, is to sharpen that vague statement to something with pinpoint accuracy.

And we've been able to do that with these telephone records and we're delighted to get them. We know what he wants. We'll get them.

But as to other records and information, you know, we just don't know. We've been over the discovery requests quite a bit and tried to hone them down to something specific.

Maybe this conversation isn't the time to do that.

THE COURT: No, this is a fine time to do that. I set aside enough time. I want to get this case resolved in this court and we're not going to get this case resolved until we get past whatever these barriers are so that the motion, which you did see that Judge Gleeson had marked your motion off and said that it could be resubmitted after the discovery deadline.

Now, again, I don't think that the telephone service is an issue. I think that's easy. I do look at the other matters that were presented which do go I think a little bit too far afield.

I do believe that when you're talking about the retention and destruction of records as a policy question, you

had a chance to depose two officers, even though they weren't helpful to you.

What you're really trying to show is that Hamshaw, his deposition is correct and that what they have created otherwise is a smokescreen, Mr. Izen.

MR. IZEN: Your Honor, may I be heard?

THE COURT: Yes.

MR. IZEN: Okay. Let's make a distinction between Acomarit on the one hand and Marine Atlantic and Monte Cristo on the other.

Mr. Hamshaw speaks for Monte Cristo and Marine Atlantic. He has nothing to do with Acomarit that I found so far except some passing contacts when Acomarit manages the vessel and he represents the owners.

THE COURT: Well, that's why I was trying to get you to focus on Atiele.

MR. IZEN: Okay. Atiele, he is the custodian or record.

THE COURT: For Acomarit.

MR. IZEN: Hamshaw's deposition testimony is that he keeps whatever his fiduciary or he could be blamed for handling money.

THE COURT: And that's Acomarit, correct?

MR. IZEN: No, that's Marine Atlantic. He is the vessel manager, or rather he approves expenses that are paid

for the vessel.

THE COURT: So who are you trying to --

MR.IZEN:What happens is they send him the payment or purchase order that he approves, he signs, after he looks it over. He sends it offshore to Verins Bank, a German bank, and then Verins Bank wires money all over the world, including in the United States, including into New York, to pay the vessel's expenses and pay ship brokers. That's what Hamshaw testified to.

And Acomarit says that everything to do with their records is in house. They keep their records for three years, normally, and then they destroy them.

Hamshaw could not give the testimony of the retention policy of Marine Atlantic and Monte Cristo and he said that after he kept documents for a year, he got tired of keeping the document, he's send it to Atiele.

And now what we're being told is we're going to have -- he's mistaken and there's going to be some kind of filing that there is no existence of records. What do you expect the defendants to do whenever they face the problem of destruction of records?

MR. NORK: Your Honor, may I respond?

MR. IZEN: This is predictable to us, but that's the -- that's where we're getting cut. That's where the rubber meets the road.

THE COURT: Mr. Nork.

MR. NORK: This is Tom Nork.

THE COURT: Yes.

MR NORK: Your Honor, the distinction Mr. Izen made is crucial. You have Acomarit, a ship operator. They operate many, many ships for many owners. The discovery is Acomarit and its contacts and its records has been done and the two corporate representatives have been deposed, and that's one issue off to the side.

THE COURT: Except for the phone records.

MR. NORK: Right. And we're going to get those. And then we look over now to Marine Atlantic Limited and Monte Cristo, which is essentially a ship owning entity that relies on the Surrendor Atiele's of the world to monitor the commercial activity of the ship, of the investment.

Surrendor Atiele signed the verifications for the interrogatory responses and was the one that prepared, and reviewed, and assisted us in thinking through the response to the request for production of documents.

So my whole thrust here is that Surrendor Atiele, on behalf of Marine Atlantic Limited and Monte Cristo, reviewed the requests for documents which included documents that I think Mr. Izen wants, which is -- I'd would like to get pinpoint as a laser beam on this -- which are these documents that Hamshaw alluded to. He said that -- Hamshaw said he

traveled to Europe and that he had expense reports and that they forwarded those to Atiele.

Also, I think I heard Mr. Izen just say that there were other documents that were generated in connection with Hamshaw's activities that he didn't want to hold onto anymore and he sent them to Atiele. Those documents have been requested. Atiele went through the request for documents, searched his files and found nothing.

So the discovery has been requested. It has been reviewed, it's been studied and it's been responded to and I don't know what else I can do to respond to the request for production of documents other than ask this client -- he's not even a client -- to ask this third party to look at his files and records and respond and he has done so. And our discovery responses are what they are.

MR. IZEN: Your Honor, may I be heard?

THE COURT: Yes, Mr. Izen.

MR. IZEN: The supplemental answers to interrogatories with the documents that we got came before Hamshaw's deposition.

When I went in to take Hamshaw's deposition, Hamshaw clearly admitted that the only documents I got were from Hamshaw.

Now, Mr. Atiele may have made these statements that there were no records. But it's unbelievable that there's no

records. It's unbelievable that they would be in litigation in Houston, raise the issue of jurisdiction under 4(k)(2) in Texas jurisdiction, prevail on that, and then be sued in New York and have destroyed records along the way.

THE COURT: I, again --

MR. NORK: What precisely?

MR. IZEN: That is, to me -- you see the question is what kind of records did they have to have to function as a business entity? And it's clear that records existed at one time, even from Mr. Hamshaw's testimony by itself.

THE COURT: But, again, Mr. Izen, I do believe Mr. Nork -- yes, there are records, but what is the precise type of record that you are expecting to find that you have gotten, essentially stonewalled in your own mind about? I'm not interested in talking about what has been destroyed. I'm interested in talking about what do you think has to be kept in the ordinary course of business that they have not turned over that would have to exist?

MR. IZEN: Well, specifically to address this question in jurisdictional terms, whenever Mr. Hamshaw was paid to reimburse for his expenses, traveling abroad -- and that's out in his deposition -- there's places in his deposition where he indicated that occurred, that indicates that they either paid a New York resident to do something outside of New York or paid the New York resident, or they paid him to do

something in New York. Those records are part of the record that Mr. Hamshaw said he did not have and had sent to Atiele.

THE COURT: And that's Marine --

MR. IZEN: There's also the issue of his phone records --

THE COURT: But that's Marine --

MR. IZEN: Between Marine Atlantic Limited and Monte Cristo. He said he called people in Bermuda --

THE COURT: Hey, Mr. Izen?

MR. IZEN: -- reported to him from time to time --

THE COURT: Mr. Izen.

MR. IZEN: -- and had conversations with Mr. Atiele ---

THE COURT: Mr. Izen.

MR. IZEN: Those records have not been produced.

THE COURT: Mr. Izen. You don't need to talk about the phone records again, because the phone records are going to be produced. That's a done deal. Okay? I don't need to --

MR. IZEN: I'm sorry, Your Honor. I've been confusing between Acomarit and Marine Atlantic --

THE COURT: All three are producing phone records. That's a done deal. Okay.

MR. IZEN: All right.

THE COURT: That we don't need to hear about.

MR. IZEN: I'm sorry.

THE COURT: But again, now you're talking about reimbursement and I do see where you were questioning Mr. Hamshaw at his deposition. I believe it's around page 84. "And when you travel, like you go to Switzerland, are those expenses paid out of your 3,000 or are they paid separately? They are paid in part from the ships themselves so that I ask for reimbursement from the ships."

MR. IZEN: That's correct.

THE COURT: "How do you get reimbursement? Again, Mr. Atiele will record the expense and direct me to pay. How do you ask for reimbursement and what form do you ask for it? By letter or fax? Yes."

So there we go, Mr. Nork. That's what Mr. Hamshaw's testimony was.

MR. NORK: Wait, Judge.

THE COURT: And that's what we're interested in getting copies of. If there are faxes and they go to reimbursement and then there were checks and he says I believe it's a separate wire transfer --

MR. NORK: Judge, those very records we discussed in our three to four-hour meeting with Mr. Izen. Those very records we asked Mr. Atiele to search for and produce. Those very records he did not have and we responded as such in our discovery.

THE COURT: But why wouldn't Mr. Izen have a chance

to depose him about his answers? Just saying no when you have somebody else saying specifically, directly, what types of records and that he is the keeper of the records and he was on board -- it's not as if he took over from somebody else who may have not kept up their end. And I have no idea what the laws in Switzerland are about retention of expense reports, but I'm sure that there is some law about it.

And then there's also the question about Mr. Atiele coming to New York and whether or not, when he spoke to Mr. Hamshaw in New York he was in any way, shape or form conducting business.

Why wouldn't Mr. Atiele be a proper person for Mr. Izen to depose here?

MR. NORK: Because, Judge, it's the issue of reasonableness. I mean, we have produced to Mr. Izen --

THE COURT: Reasonable means that these records -- again, they may not have done any harm to your client, but there were records that Mr. Hamshaw was paid for things may not have done any harm, but then when you say that those records never or don't exist and that Mr. Hamshaw must just not have been right, that doesn't sound reasonable to me.

MR. NORK: Well, Judge, here's what I have trouble with as far as reasonable is concerned. What I'm hearing is we're going to return to Europe and spend another $12,000 to find out if this paper exists or not when Mr. Atiele has

responded in his discovery responses that he doesn't have such records.

And the truth of the matter is, Judge, I guess I really don't care if we have to take this gentlemen's deposition. I can't compel him to do anything. He's not an employee. The 30(b)(6) depositions that plaintiffs seeks of the actual defendants in this case, those very people have been already deposed.

Hamshaw is a 30(b)(6) deponent for Marine Atlantic Limited. Hamshaw is the 30(b)(6) deponent for Monte Cristo. Bill and Sulzer are the 30(b)(6) deponents for Acomarit.

So that discovery has been done. Those 30(b)(6) depositions have been accomplished. If Mr. Izen wishes to take the deposition of Mr. Atiele, I don't know how I can assist him in producing in Mr. Atiele.

THE COURT: I don't know that you would assist him at all. I just don't think that you would move to quash on behalf of somebody who is not your client and was not an employee of your client.

MR. NORK: No, Judge, I would not move to quash the deposition of Mr. Atiele.

THE COURT: That's right. So then that would not be an issue. I would just have to give Mr. Izen an extension of time on his discovery deadline. And I do -- I am sensitive, Mr. Nork, that this has cost your client more than it wants to pay

and that's why I said if you guys were really great lawyers, you would just be settling this case instead of pursuing this.

But again, that's neither here nor there. Mr. Hamshaw's deposition did reveal that there were documents. That you're saying that Mr. Atiele has already answered the question that there are no documents.

Well, again, I don't know what it will produce for Mr. Izen jurisdictionally, but it does seem to me that if there were documents that were testified to and there's somebody who's a keeper of the records -- Mr. Izen, I don't believe that you need 30(b)(6) on all three of these entities.

I do buy that Mr. Nork, as he has said that you've had Hamshaw for a deposition and he would be the one produced, and that you have had Biele and Sulzer, who are Acomarit, and that they have already been produced. Whether or not they were useful to you I don't think is the question.

MR. IZEN: Could I respond?

THE COURT: Yes, Mr. Izen.

MR. IZEN: First off I'd like to correct the record. I do not believe that the record in this case as it stands will show that Mr. Hamshaw was produced voluntarily as a 30(b)(6) witness by Marine Atlantic.

MR. NORK: I didn't say that.

MR. IZEN: I believe that he appeared under notice from Mr. Nork's office. I'll have to check that.

THE COURT: Yes, but you know what?

MR. IZEN: Also, that Mr. Sulzer and Mr. Biele appeared voluntarily, but they did not appear in the capacity of a 30(b)(6).

THE COURT: But, Mr. Izen --

MR. IZEN: If they want to stipulate to the fact that they did, that's fine, but I don't think that that's the state of the record presently.

THE COURT: But, Mr. Izen, would that eliminate your concern about the filing of a 30(b)(6) notice if there to stipulate that they did appear as --

MR. IZEN: Yes, Your Honor, and here's the point. You have discretion to limit me, but I don't think that the discretion includes the right to say that once it's apparent that there is destruction of records or missing records that you can state that I can't inquire as to what happened to them.

THE COURT: Sir, I have not stated anything of the sort and I also have said to you that what I don't want is for you to spin out. I want you to remain focused. I do believe that there has been testimony by Mr. Hamshaw that there were records.

You also say that you have in answers to interrogatories or document requests from Mr. Atiele that there are no records.

That does not mean that there is a separate inquiry

into destruction of records, because I don't know which of these gentlemen is saying something that's truthful at this point and neither do you.

MR. IZEN: Yes, Your Honor.

THE COURT: I am trying --

MR. IZEN: I would like to ask one other thing with your permission.

THE COURT: Yes, Mr. Izen.

MR. IZEN: There's in the subpoenas for the deposition notice -- there's a request again for the closing file, the second closing file where it was refinanced in I believe 1997. And the status of that is that Mr. Hamshaw in his deposition admitted that he signed documents in New York pertaining to that second refinance.

Now, I asked for that in the original discovery and the response was that they would check to see if it was privileged. And I never got it and they're trying to assert a privilege under Swiss law of some kind supposedly to the refinancing documents.

Now, we went through refinancing documents-I mean, financing documents with the 94 and entered a protective order. Those were the documents that Mr. Hamshaw's signed.

Now, obviously, the production of that refinancing is important for several reasons, one of which Mr. Hamshaw's admission that all of a sudden after the case is filed and he

says he's not an agent for service of process, he remembers. As I put in my letter that --

THE COURT: Yes, I saw that.

MR. IZEN: -- he was an agent contractually pointed for service of process on any disputes for the first purchase of the vessel. Mr. Nork tries to say, well, his status was overtaken by events because of the refinancing.

Mr. Hamshaw testified that he signed documents with respect to the refinancing. We want these refinancing documents and we believe that they are discoverable, to the extent that there's some foreign blocking statute or whatever that needs to be dealt with, and I'd bring that up now.

THE COURT: Mr. Nork.

MR. NORK: Judge, we'd be delighted to produce the refinancing documents.

THE COURT: Wonderful. That's what I wanted to hear. Very good. And it will be subject to the protective order, as you did with the first documents. So the refinancing documents and the telephone calls have been resolved.

The outstanding issues are the other 30(b)(6) deposition notices and, Mr. Izen, what I would like to hear from you is, again, I am of the mind that you should be able to pursue a deposition of Mr. Atiele, because live questioning is very different than an interrogatory.

And if that's something you choose to do, I would

give you the time to do that, but you would have to comply with whatever the international law provides.

MR. IZEN: Yes, Your Honor.

THE COURT: But, again, that doesn't mean that I believe all of your three 30(b)(6) depositions need to go forward. If defendants are willing to stipulate that they would produce the same people that have previously been produced, should these 30(b)(6) notices go through, I don't think you need more.

MR. IZEN: I think that would be protective, except to the extent that, you know, with respect to any interrogatory on any issue that I didn't -- that comes up from this new production that I didn't get to ask him.

THE COURT: Well, again, sir --

MR. IZEN: You see, you got the telephone records coming in, maybe, hopefully, and I took them without those records.

THE COURT: But again, Mr. Izen, I need to set some definite line here. And instead of setting a definite line datewise as to when you must accomplish this, because I don't know what hoops you're going to have to jump through, I'm telling you that if you want to proceed against Atiele, take whatever action you need to, but take it expeditiously, like within the next --

MR. IZEN: Your Honor, may I be heard on what I

think Swiss requires me to do?

THE COURT: Yes.

MR. IZEN: If he insists on a Swiss deposition and he is not -- he can't be subpoenaed or force the deposition the other way, they treat any kind of testimony as having to be in-court testimony. It has to be done in front of a magistrate from what I understand under Hague Convention.

So winding that up does take longer than 30 to 60 days. I can jump on it expeditiously and I just point that out that they're probably the most blocking of any of the countries in Europe.

Britain, on the other hand, is past deposition. UK is past depositions in their civil practice rule.

THE COURT: Mr. Izen, I thank you very much, but I don't have the time.

MR. IZEN: I'm sorry.

MR. UNGER: Your Honor, this is Mike Unger.

THE COURT: Yes, Mr. Unger.

MR. UNGER: If I may, since the questioning of Mr. Atiele seems like it's going to be rather focused, might it not make more sense and be substantially cheaper for our clients if Mr. Izen's questions were put in the form of writing and the deposition proceed on a written question format?

I think this whole smoke and mirrors thing can be wrapped up if he provides some focused limited questions and

we can get on with this thing.

THE COURT: Unfortunately, Mr. Unger, I have to say prior to being a magistrate judge I was a lawyer myself. I wouldn't think that the written questions were going to do the same job.

THE COURT: Mr. Izen?

MR. IZEN:We would want to deposition, Your Honor.

THE COURT: But again, the other two depositions that you've noticed, I don't think there's any need to go forward for these 30(b)(6). I'm going to give you until -- and I'm going to put this on for a conference, a telephonic conference in June.

And at that date I want you to tell me either it's been set and what the date is. I don't want to hear at that time that you're still working to get it set.

I'm giving you the next 30 days free and clear to make the arrangements and after that, I'm not going to be as charitable. It may be that you had to set it up a month past that, but I don't want this to be going on throughout the summer. That will make it a year in this court. Do you understand, Mr. Izen?

MR. IZEN: Yes, Your Honor.

THE COURT: Okay.

MR. UNGER: Your Honor, if I may, if we're talking about having to do a live deposition of a non-party witness in

Switzerland, then I think the issue of cost becomes an issue.

THE COURT: Again, Mr. Nork and Mr. Unger, I can't let you have it both ways. You've already had your chance at saying that the 30(b)(6) notices that were already served upon all three of these entities should be quashed.

I've given you some credence in that I don't think that Mr. Izen needs to take depositions of the same people he's already taken depositions of, and if you want to stipulate that they would be the same people that would be produced, that's fine and dandy.

As to this other person who is specifically mentioned in the deposition of Robert Hamshaw and you have acknowledged that he is the keeper of the records and he has submitted an affidavit that basically -- or he's verified the interrogatories saying that there are no such records or he doesn't keep these records, or he has none of these records, I believe that Mr. Izen is within his rights to find out what's up here.

And I don't think he's going to find that out in other ways.

Now, if you want to make it easier and get him to cooperate and waive his rights under Swiss law and do it as a telephonic deposition where you don't have to fly over and it can be set up similarly to the other depositions that were taken in France, so be it. Otherwise, Mr. Izen's going to

start jumping through the hoops and is going to report back to the Court on the next date of the phone conference what the status is.

He's already going to have received the phone records by that date, or at least I hope he will have, and he's already going to get the closing documents on the refinancing of the second mortgage.

Is that clear, gentlemen?

MR. IZEN: Yes, Your Honor.

MR. NORK: It is, Judge, and I'll just state for the record state that the defendant stipulates to the 30(b)(6) witness issue.

THE COURT: That's fine. So that's on the record.

Okay. Now, I'm looking at dates. Everybody have their book out?

MR. NORK: Yes.

THE COURT: How does 11:30 on Tuesday, June 10th look?

MR. NORK: Perfect. 11:30 New York time.

THE COURT: 11:30 New York time. Mr. Izen?

MR. IZEN: That's 11:300 Eastern Standard Time on the 10th of May?

THE COURT: On the 10th of June, sir.

MR. IZEN: Oh, the 10th of June.

THE COURT: I'm giving you a little extra time and

that's why I'm saying I don't want to hear it's still getting set up.

MR. IZEN: Yes, Your Honor.

THE COURT: At that date, everything is going to be in hand and, again, I am extending the deadline for discovery from the previous date. I will at the next conference on June 10th discuss the final cut off and Mr. Izen, I want you to be clear.

Again, if there's something that needs to be done, it needs to be done now. If there's letters that need to be sent out or arrangements for diplomatic -- having the proceedings taken in a Swiss court, do it now.

If you're going to agree with Mr. Nork and Mr. Unger that this should be handled some other way and Mr. Atiele is agreeable, so be it.

But by that next date, I want to know what the plan is so that I set the final cut off.

MR. NORK: Yes, Your Honor.

THE COURT: Judge Gleeson has turned it over to me and then I believe that the motion was previously filed will be refiled. I don't want to hear about anybody's knee. I don't want to hear about anybody's vacation. I just want to hear that it's been done. Do you understand?

MR. IZEN: I understand.

THE COURT: Okay. Mr. Nork, between now and that

date I expect that those telephone records will be produced to Mr. Izen.

MR. NORK: I will do it.

THE COURT: And as to the refinancing documents, if you need Mr. Izen to sign off on something before they're produced, get that to him now.

MR. NORK: I will do it.

THE COURT: Is everybody clear on their obligations?

MR. NORK: Yes.

MR. IZEN: Yes, Your Honor.

THE COURT: Okay. June 10th at 11:30 I will be back on with you. Until that time, this matter is adjourned. Thank you.

(Proceedings concluded.)

CERTIFICATION

I, Christine Fiore, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of proceedings in the matter of:

CAPTAIN SHERIFF SAUDI

v.

MARINE ATLANTIC, LTD., et al.

Date: April 22, 2003

Place: Brooklyn, New York

where had as therein appears, and that this is the original transcript thereof for the files of the United States District Court.

Date: May 19, 2003

Christine Fiore

Transcriber

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Captain Sheriff Saudi, Plaintiff,	*	Docket #CV-02-2495 (JG)
	*	United States Courthouse
v.	*	Brooklyn, New York
	*	June 10, 2003
Marine Atlantic, LTD, et al., Defendant(s).	*	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LOIS BLOOM
UNITED STATES MAGISTRATE JUDGE

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(Attorneys telephonically connected)

THE CLERK: Civil Cause For Telephone Conference, Docket #02-CV-2495, Saudi vs. Marine Atlantic, et al. If the parties could please state your names for the record. For the Plaintiff?

MR. IZEN: Joe Alfred Izen, Jr.

THE CLERK: And for the defense?

MR. NORK: Tom Nork.

MR. UNGER: And Michael Unger.

THE CLERK: The Honorable Lois Bloom presiding.

THE COURT: Good morning, Mr. Izen, Mr. Nork, and Mr. Unger. Can you all hear me?

MR. IZEN: Actually I'm having a little trouble, Your Honor.

THE COURT: Are we conferenced together by Mr. Nork?

MR. NORK: Yes, Judge.

THE COURT: Okay. Mr. Izen, can you just hold the phone closer? Can you hear me?

MR. IZEN: Yes, I can hear you --

THE COURT: Okay.

MR. IZEN: -- a little bit faint.

THE COURT: I can hear you as well, sir, so that means that the tape recorder can hear us as well. There are a number of issues that I want to get to in today's conference. At the last conference the Court had directed Defendants to

produce the 1997 closing binder for the vessel refinancing, and phone records. After Plaintiff agreed to file the applicable international convention, the Court directed Plaintiff to

inform the Court of Atil's deposition date. And I would like that to be done at today's conference. By Order dated May 27th, 2003 the Court directed Defendants to turn over the closing filewithout proposed redactions.Also Defendants were directed to appear by phone today, and Court advised counsel that prior permission is required to fax to chambers. Mr. Izen, I would likewise like to remind you -- both Defendants and Plaintiff's counsel have gotten very free with faxing to chambers. And again although I don't oppose getting a fax in an emergency, it is not the preferred manner. And the individual rules require that you need permission to fax. So both counsels are now put on notice. By fax and letter dated May 28th, Plaintiff informed the Court that he'll sign a protective order for the1997 closing binder, and requested the Court to impose costs on Defendants for Atil's deposition, stating that Defendants are in a position to be able to obtain the information from Atil as to when and if records were destroyed, and the general content of the records which can no longer be produced due to destruction. By memo endorsement the Court noted that Defendants had already been directed to produce the binder whether or not Plaintiff

signed a protective order, and left the remaining issue regarding the cost of the deposition to today's conference.

Accordingly today the Court is asking for Mr. Izen to identify the deposition date for Atil. And then the Court will set the final cutoff for jurisdictional discovery. I will also address Plaintiff's request that Defendants pay for Atil's deposition, and then any other remaining questions that are outstanding from the discovery that's before the Court. So starting with you, Mr. Izen, what is the date that's been scheduled?

MR. IZEN: Your Honor, I do not have a firm date to be scheduled at this time. I wish to make a report to the Court concerning what the legal ramifications are and the efforts to take Mr. Atil's deposition. I did write a letter to Mr. Nork within the last two weeks requesting an alternative handling of an effort to get the records. The research which we have done has indicated that if Mr. Atil stands on his right as a Swiss citizen we are required to procure an letter rogatory from your office -- you -- Judge Gleason. When - we are require to transfer that or send that to the Swiss Central Authority under the Hague Convention. We are required to proceed under the Hague Convention for gathering evidence. Unfortunately Switzerland, under its Article 23, has a statement that they are not going to give documents in aid of pre-trial discovery as we understand it here at common law

countries.

Now, it's not doubted that Mr. Atil would be produced under Swiss law for a deposition. The problem that we have is the attempt to compel the records which they claim the independent custodian has, and has possession, custody and control. They refer to him as independent. We don't accept that nomination.In any event the procession through the Swiss Central Authority requires that you have the actual Magistrate over there take the testimony, as I understand it. That can be waived. It's a long process. It's expensive. I suggested that the President of Marine Atlantic, Limited, and the officers, whoever pays At. is the custodian, be produced in Bermuda at the home office or in New York to categorize what records Mr. Atil has or has custody of. And if they were destroyed, what he had destroyed. That was a suggestion in the alternative.

Now, we can proceed under this treaty. But it's not something that happens automatically. The Supreme Court in Aris Specialy talks about mostly French blocking statutes and things like that, but Switzerland is mentioned. And that's the current state of the affairs. We were hoping for some other alternative than to spend $10,000 to attempt to get a legal proceeding and have written questions to ask the witness, and then to find out that we couldn't get documents. Now, that's our statement with respect to where we are. I

have contacted at least two third-party companies that assist in matching Swiss attorneys with depositions for Americans -- or for litigation. And if we proceed under the Convention, where it appears we have to with a non-party, if Atil is considered to be a non-party, that's where we are with the Hague Conventi- on on that.

THE COURT: So again I get back to my question. I have written down -- I have read the Supreme Court Aris Specialy case. How long do you believe that that process would take? This Court would issue the letter of rogatory.

MR. IZEN: Aris Specialy, Your Honor, said anywhere from three to ten months if it was successful --

THE COURT: And again --

MR. IZEN: -- the request.

THE COURT: And again you've been in touch now with some of the --

MR. IZEN: Third party people that help take depositions.

THE COURT: That would help take the deposition. Is that the estimate they're giving, three to ten months?

MR. IZEN: Yes, Ma'am, that's proceeding through the Central Authority. Now, there are some other options. Instead of calling a Counselor Official to take the evidence, it doesn't take as long and won't have as much Court supervision. I don't think they have Court supervision. The problem

is that guy has no power to compel the witness. The only one that's got the power to compel the witness is the Swiss Magistrate Authority there. And if you can visualize taking somebody to J.D. Court for whatever, like a Coroner, and putting them up on the stand and then the Judge has pre-arranged questions, that's a possibility of what you would get depending on what the Swiss Authority says -- or the Central Authority. The fear we have is that the documents that we would want, they would say they would not produce because they were pre-trial documents, it was a fishing expedition, so on and so forth. This guy is not a party. He's a non-party.

THE COURT: I understand all of what you're saying, Mr. Izen. But again the Court doesn't have the authority to make the choices for you. The Court is only looking at this in terms of scheduling.

MR. IZEN: Yes, Your Honor.

THE COURT: Because again whether or not it's worth it to you or not is your call. But how --

MR. IZEN: Well we'll go the letter rogatory route if there is no other alternative to getting the people in the company of Marine Atlantic who control this custodian -- who's paying -- who this custodian reports to.

THE COURT: I understand all your arguments. And I did note that Mr. Atil did sign the verification and document requests for now. But again if there's standing on the

Convention, I don't know if there's anything else you're going to be able to do at this point. I --

MR. IZEN: Well I understand, Your Honor. And you see my problem. And I appreciate your view. And we will go the letters rogatory route. And I will have a motion to your office as you direct me --

THE COURT: Well --

MR. IZEN: -- as to the letter.

THE COURT: --- the only other question the Court has is whether Defendants would consent to any alternative. Mr. Nork?

MR. NORK: Your Honor, I have no -- I represent of course Marine Atlantic,Limited, MonteCristo, and EchoMerit And I have no power or right or authority to compel to make Mr. Atil do anything. I've asked him if he would consent to being deposed in France as were the company officers for Echo Merit. And he will not do that. He --

THE COURT: Okay, then that's the answer. I do want to note that for purposes of the deposition that's already been turned over from Hamshaw that the Court finds it curious that Hamshaw would meet with Atil in New York. Now, he said in the deposition -- this is at page 88 -- that it wasn't for malpurposes but just to say hello. So there does seem to be a range of questions that Mr. Izen will need to put to Mr. Atil. And again,Mr.Izen,the original Order from JudgeGleason

that put this matter into my hands was that there would be a mot- ion -- a supplemental brief submitted after the closure of the discovery period. And that would be three weeks after the conclusion of the discovery period, that there was going to be a supplemental brief in opposition to the motion to dismiss for lack of personal jurisdiction, and then Defendants would have two weeks later the chance to supplement their brief in supp- ort of the motion. So that's still my marching orders from Judge Gleason. Whether or not it will be Judge Gleason or myself that issue the letter of rogatory we can discuss among ourselves. But since that's the route that's going to be taken here, again I have the power to extend the discovery period. I did think that the Atil deposition would be the final piece of this. Mr. Izen, I did yesterday endorse, and hopefully you all got a copy of the Court's Order, there had been a non-party whose deposition had been noticed I believe for yesterday.

And --

MR. IZEN: Yes, Your Honor. Would you like me to make a report on that from --

THE COURT: Well, all --

MR. IZEN: -- the point of Plaintiff?

THE COURT: -- I want to know is did the deposition go forward, sir?

MR. IZEN: No, it did not because I was informed that

they were not going to show up. I have that in writing. And by the time I got your Order practically speaking the time I could leave on a plane to get there had expired.

THE COURT: Have you contacted them to make new arrangements?

MR. IZEN: I have not done so yet, Your Honor.

THE COURT: Because again, Mr. Izen, their remedy was to go to the District of Massachusetts to move to quash. Instead they again chose to write a letter to this Court asking to be part of this conference today. And unfortunately because I was at a conference last week I didn't reach their letter

until yesterday. But you can assume that if they're going to move to quash, they're going to do so in the District of Massachusetts as the rules provide. And if you don't have a new date set, they're going to have nothing to move to quash on. So I would say that you have some impetus to move on that. Your application to this Court requesting letters rogatory , how quickly can you submit it?

MR. IZEN: Can I have -- they've got to be in a certain form. Can I have seven days to get it to you?

THE COURT: Absolutely. And I will -- you can address it to me. Whether it needs to go to Judge Gleason or can be issued under my powers, I will take it upon myself to figure that out, and if need be get it up to Judge Gleason and have

him take care of the matter.

MR. IZEN: Then I will state with your permission that at this point with their interpretation of who the foreign officer being unclear to me, it may be that you'd make a recommendation of what would be the best way. And then Judge Gleason would accept or sign your recommendation.

THE COURT: I don't think I need to do it --

MR. IZEN: I'd get back with you on that.

THE COURT: Again, I don't think I need to do this on R and R. It's either going to be -- and the way that I'm suggesting, Mr. Izen, is that you address it to the Honorable John Gleason and to myself.

MR. IZEN: Good. Thank you.

THE COURT: And then --

MR. IZEN: I'll do that.

THE COURT: Then whoever needs to make the call, I don't want this to be an extended process. I want you to be on your merry way. And again what I am going to require from you is an update on status as to the setting up the deposition. At this point in time the Court does not want to take the fire out from under your feet. This was supposed to be a short period of jurisdictional discovery. It's been an extended period And again it's been because of one thing and another. And the Court doesn't need to rehash water under the bridge. But I do want this matter to move.

MR. IZEN: Yes, Your Honor.

THE COURT: So seven days from today brings us to the 17th. I will be looking for your application. And again address it to both myself and to Judge Gleason. And then if there is a format for the letter rogatory, attach that format so that one of us can sign it. And you need not put our names underneath. We can fill in the blanks. And then I want you to -- as a status matter I'm going to give you a date. And is there anything else outstanding besides -- let me step back. You have the District of Massachusetts' gentleman who you're going to again renew your deposition subpoena, I imagine. And his name is Doyle. Is that correct?

MR. IZEN: Yes, Ma'am, Greg Doyle.

THE COURT: And besides Greg Doyle, and besides Surinder Atil, is there any other outstanding discovery?

MR. IZEN: The only other outstanding discovery we would have since we've elected to go the rogatory route and not attempt to get from the President or people that pay the custodian the information from Atil, we have tried to get anything we could from third parties such as Mr. Doyle. Presently we have not received the phone records or any of the other records that you ordered from your Orders other than the closing binder.

THE COURT: Well let me ask. Mr. Nork, those telephone records. What's the problem?

MR. NORK: We did exactly what the Court ordered, Judge. And let me go one party by one party. Echo Merit -- we, after our last conference, asked Echo Merit to send a letter to it's telephone provider, Swiss Com, asking for telephone records of telephone activity from it to New York and back. And it did do that. It sent a letter to Swiss Com asking for those records. It got a response from Swiss Com. And Swiss Com said to Echo Merit, "We're sorry but we do not maintain telephone records for a period longer than six months from the date of request." I furnished to Mr. Izen last week the letter sent by Echo Merit to Swiss Com, and Swiss Com's response.

Next as to Scope Management, which is Mr. Atil. I asked Scope to do the same thing. Scope sent the letter to Swiss Com,its telephone service provider,and got the same response as did Echo Merit. I furnished to Mr. Izen last week Scope's letter to Swiss Com, and Swiss Com's response. Next I went and asked the Consolidated Services of Bermuda, which is the entity that provides corporate services for Marine Atlantic,Ltd and Monte Cristo -- I asked Consolidated Services to send a letter to its telephone service provider,the BermudaTelephone Company, asking for telephone records of its telephone activ- ity to and from New York from the period that you ordered, January 1st 1994 through 2002,March I think March 1st which they did do. They sent a

letter to the Bermuda Telephone Co. which responded that they could not - were not able to obtain records from 1994 and 1995. However, they did furnish a computer printout of telephone activity from 1996 through March 1st, 2002, the date of the filing of the suit, which I did furnish to Mr, Izen coupled with Consolidated's letter to its telephone provider.

Lastly as to Mr.Hamshaw at Alpha Export Services, Inc., I asked Mr. Hamshaw to do the same.He wrote letters to Sprint and to AT&T, his telephone service providers, asking for the same records. And from Sprint he got a response that Sprint would only furnish records upon subpoena request.And he has not heard a response from AT&T. He's received no response from AT&T. I furnished all of those letters to Mr. Izen last week in a package. So that's where we stand,Your Honor. We have complied with your order. Defendant complied with your order by asking telephone providers. And these are the reports that they have gotten back. So --

THE COURT: Mr. Izen?

MR. IZEN: Yes, Ma'am.

THE COURT: It's hard for me to imagine, although I've never lived in Switzerland, that a phone company would only keep records for six months. As to Hamshaw's records which are located within this country and they require a subpoena, which again should not be a problem for you to get up to wh-tever the record keeper is for Sprint or AT&T if that's they

require on Hamshaw.So I would urge you to move on that,Mr Izen, to get the subpoenas to the two providers of Hamshaw.

MR. NORK: Your Honor --

THE COURT:And again you should already have who the record keeper is for those particular records. As to the Swiss records, although I find it inconceivable that anybody can operate without having business records going back more than six months, as I said I've never lived in Switzerland and know nothing about Swiss Com, and don't know whether or not what they're required to do is similar to what companies in the United States are required to do. It also surprises me that Echo Merit itself wouldn't have copies of its records regarding bills that it pays. But I don't know if that was specifically requested.

MR. NORK: Your Honor?

THE COURT: Yes.

MR. NORK: The deposition of one of the corporate representations of Echo Merit got the junk bill. He's the -- what they call the --

THE COURT: He's the 30(B)(6) person.

MR. NORK: Correct. He's the equivalent of their President. And upon questioning either by Mr. Izen or myself, I just don't know, he was asked bluntly and directly if Echo Merit does business in New York and would have a reason to make telephone calls to and from NewYork

have contacted at least two third-party companies that assist in matching Swiss attorneys with depositions for Americans -- or for litigation. And if we proceed under the Convention, where it appears we have to with a non-party, if Atil is considered to be a non-party, that's where we are with the Hague Conventi- on on that.

THE COURT: So again I get back to my question. I have written down -- I have read the Supreme Court Aris Specialy case. How long do you believe that that process would take? This Court would issue the letter of rogatory.

MR. IZEN: Aris Specialy, Your Honor, said anywhere from three to ten months if it was successful --

THE COURT: And again --

MR. IZEN: -- the request.

THE COURT: And again you've been in touch now with some of the --

MR. IZEN: Third party people that help take depositions.

THE COURT: That would help take the deposition. Is that the estimate they're giving, three to ten months?

MR. IZEN: Yes, Ma'am, that's proceeding through the Central Authority. Now, there are some other options. Instead of calling a Counselor Official to take the evidence, it doesn't take as long and won't have as much Court supervision. I don't think they have Court supervision. The problem

MR. NORK: It keeps copies of bills it pays. I assume so, Your Honor.

THE COURT: And --

MR. IZEN: Your Honor, I can address that with your permission.

THE COURT: Yes, please, Mr. Izen.

MR. IZEN: There was a specific question asked George O. Solzer, and one asked John Neil about whether Echo Merit has a custodian or keeps its own records, meaning a custodian like Atil. And the response at the deposition was that they kept their own records on site.

THE COURT: And so what I'm saying to you, Mr. Nork, is whether or not the Swiss Com has records going back, it would be surprising to me that a company pays records and doesn't keep copies of bills it's paying.

MR. NORK: Well, Your Honor, I don't think those are the facts, that it doesn't keep records. But the precise discovery requests of Mr. Izen for Saudi that we discussed in detail in our last hearing where remember we tried to get focused on exactly what documents Mr. Saudi was looking for, and he was looking for documents that had to dowith business in New York. And what I hear you saying is that yes certainly Echo Merit pays invoices.And it pays invoices for various and sundry things that it does to run ships. But I guess what we could do is gather every invoice that it ever

paid. And Mr. Saudi could cull through them and see if there are any invoices that were paid to New York. But alternatively what the company has done in response to requests for production is conduct a search of --

THE COURT: No, Mr. Nork --

MR. NORK: -- files. And it hasn't found anything.

THE COURT: Mr. Nork --

MR. NORK: And I have signed those requests for production as an officer of this Court.

THE COURT: Let me stop you, Mr.Nork. The Court was not suggesting that you turn over to Mr. Izen invoices for him to be able to page through to see if any of those invoices were paid to New York. What the Court is finding a bit too difficult to swallow here is that a company would not have records of where phone calls were made. Because when they pay bills those bills are for service. And if you're saying as you did at the last conference that you were not the person that would provide thatinformation because that information would be provided by the telephone provider, and now you've requested that information from the telephone provider and they say they don't keep any of their records for more than six months, so you're suggesting to the Court that that's the end of the story.

MR. NORK: Judge, I'm not going to suggest anything to the Court. I'm going to be real precise with the Court. The

discovery requests of Echo Merit asked for records of telephone activity to and from New York. That Echo Merit does not have. And for whatever reason the Court or Mr. Izen wish to believe or not, they can believe the sworn testimony of its President that they don't do phone conversations to and from New York or not.

THE COURT: But what I --

MR. NORK: But the fact that they have looked for them and don't have any --

MR. IZEN: Your Honor, excuse me. That's directly refuted by Mr. Hamshaw who indicated there were at least a few calls.

MR. NORK: No, Mr. Hamshaw doesn't talk to Echo Merit, with all due respect.

MR. IZEN: And we've had Mr. Garrett who indicated there were a few calls.

THE COURT: Well what you're going to have to do is you're going to have to get it from Mr. Garrett and Mr. Hamshaw's side, because I do know that if you serve a subpo- ena on the telephone provider here, and then it shows that there were calls placed, and Echo Merit happens to be on the other end of that call, then you're going to have something to come back to me with, Mr. Izen. At this point in time I know that when you requested telephone records for calls by Defendants to or from New York, their answer was

that Echo Merit possesses no information. Then they said that the telephone service provider was Swiss Com, insinuating that although they had none of the information, that Swiss Com may. Now Swiss Com seems to be complete dead end for you And I do note that when Plaintiff deposed Solzer and Billay they stated Swiss Com will not provide the records unless Echo Merit asks for them. So I do think, Mr. Nork, that some of this is a bit disingenuous.

MR. NORK: How, Judge? I need to know so I --

THE COURT: Because I do not--

MR. NORK: -- can make it clear.

THE COURT: -- I do not believe that the President of a company would necessarily know whether any of its agents -- how many people are employed at Echo Merit?

MR. NORK: I don't know.

THE COURT: Well, again, if you don't know, it's more than a handful.

MR. NORK: I'm sure it is.

THE COURT: It's more than 100. So how is the President going to say with any certainty that nobody on his staff has ever called to or from New York? That is beyond my ability to give credit to. Mr. N rk?

MR. NORK: I -- what can I -- how can I respond, Judge. You've made up your mind.

THE COURT: Well, if you were the president of a

corporation that did international business, would you be aware of whether or not any of the employees in your company had ever called to a particular destination?

MR. NORK: It depends on the business, does it not, Your Honor?

THE COURT: Well, again, if you're saying that this gentleman, Mr. Solzer or Mr. Billay, whichever one it is that you're speaking about, personally reviewed all of Echo Merit's telephone bills for the period of time that we're discussing, and that after review of all the telephone bills between 1994 and 2002 he had the basis to know that there was never a call made to New York-and we're talking the State of New York so it's not just a 212 area code we're looking for here -- Mr. Nork, again, the Court believes that Plaintiff should be given an opportunity to show whether or not there is basis for his claim in this jurisdiction. And I would have been happy to cut off jurisdiction and hand this back over to Judge Gleason, have you submit your supplements, if I felt that everybody was being forthcoming.

MR. NORK: I need to know how I can be more forthcoming, Your Honor.

THE COURT: Well, during the deposition it was stated that the only way that you were gonna get the information -- that Echo Merit possesses no information, and that the telephone service provider was Swiss Com. And that when

Plaintiff deposed Solzer and Billay they stated that Swiss Com will not provide the records unless Echo Merit asks for them.

MR. NORK: Which they did.

THE COURT: And for Echo Merit to say that they possess no information, meaning that they have not kept any records of their phone service and what they've paid for, just belies, you know, good business practices. How could you have no records of your phone service for the past eight years

MR. NORK: I don't know that they don't, Your Honor.

THE COURT: Well then I am directing you to review their phone records, if need be. Because again I can't imagine that a president of a company would know that nobody in his employ had ever called a particular number, unless he makes that statement after reviewing every phone record.

MR. NORK: Well --

THE COURT: And again none of these records were turned over. The answer that was given was Echo Merit possesses no information. I just don't understand, Mr. Nork, how you can make that representation that they have no information regarding phone service.

(Pause in proceedings)

THE COURT: Mr. Nork?

MR. NORK: Yes, Judge.

THE COURT: Again it's already been directed by the Court for you to turn over this information. Now, when you went to Echo Merit and they say they destroy records after six months and we're already beyond the six months from 2002 -- how long is it going to take for you to review the phone records of your client?

MR. NORK: Judge, I'll go back to them. I'm in New York now. I'm --

THE COURT: Mr. Unger?

MR. NORK: And I will go back and I will ask Echo Merit to give me all of their phone records -- everything they have. And I can only take them at their word that they don't have any telephone records that indicate telephone activity with New York. But I --

THE COURT: But again if they --

MR. NORK: -- will ask them for everything they have.

THE COURT:-- if they give you their phone records, and Mr. Izen gets a chance to look at those phone records, and it doesn't reveal anything, then power to you. You're done. But again I can't imagine when the answer was Echo Merit possesses no information, telephone service provider was Swiss Com --

MR. NORK: That was what was asked in the interrogatory. And that was the correct answer, Your Honor.

THE COURT: Well, again --

MR. IZEN: Your Honor, may I make a point, please?

THE COURT: Yes, Mr. Izen.

MR. IZEN: The deposition made it clear one point that did not come out of George O. Solzer and Neil. And that is that Swiss Com provides these records unless the people their serving specifically state that they don't want the records. Now what that means is that you have to disincline or decline to get the records, or you have to fail to ask for the records, one or the other, as you're getting your billing statements. Otherwise -- don't be under the impression that Swiss Com somehow doesn't render a bill that shows where somebody called so that they can't prevent telephone fraud or anything like that, because that's not how it works.

THE COURT: Mr. Izen --

MR. IZEN: It's clear from their testimony that they have the same type of tolling records as we have. It's just a question of whether Echo Merit or anyone else tells them not to send those statements that had those toll records where the people called.

THE COURT: Mr. Izen, I think I've expressed already to Mr. Nork that I think he needs to go back to his client at this point in time and see whether or not they have copies of invoices regarding their telephone service, and if so that that is going to be turned over. But again, sir, I think that on your end you need to move on the people who are located within

this country --

MR. IZEN: Yes, Your Honor.

THE COURT: -- so that you can show that there is some telephone record.

MR. IZEN: Yes, Your Honor.

THE COURT: And then once you show it from this side, they're not going to be able to dispute that there has been. And if you don't find that, well then again I'm doing what I can, sir. I do believe that it would be reasonable for there

to be phone records in a major international corporation. I don't think it would be reasonable for the president of that corporation to know who has been called by all of the employees. And so again I've directed Mr. Nork to return to his client regarding these telephone records because I find very unsatisfying the claim that Echo Merit requested the information from Swiss Com, and Swiss Com has said that they don't keep the records beyond six months. Without getting any further along in that, I do want to set the time you're going to get the request to the Court by next --

MR. IZEN: For rogatory?

THE COURT: Yes -- by next week.

MR. IZEN: Yes, Your Honor.

THE COURT: And you are going to set forth in that letter what steps you are going to take so that Judge Gleason is

brought up to speed if he ends up being the person that's going to need to sign off on this request. And then we're going to set a status conference regarding both the telephone records and your progress in getting these letters rogatory and whatever else accomplished in Switzerland under Article23 or whatever Swiss Central Authority lodging of the letter rogat-ory that you need. And I am looking at a date a little bit more than a month from now so that I'm not going to hear the same thing from both sides, that I'm going to have a follow up on what the topics we've hit upon today are. And again that includes, Mr. Izen, you moving regarding Mr. Doyle.

MR. IZEN: Yes, Your Honor.

THE COURT: I don't want to hear a month from now that you're still in the process of getting that situation taken care of. So we'll set this, Mr. Nork, Mr. Unger, and Mr. Izen, how does 10:30 conference on July 30th look for you -- telephonic conference, gentlemen?

MR. IZEN: I think -- let's see, what day is that, Your Honor?

THE COURT: It's a Wednesday.

MR. IZEN: Is that a Friday?

THE COURT: It's a Wednesday.

MR. IZEN: A Wednesday? The 1st or sometime that week after the 30th might be better for me. I think I have an

arbitration with the MASD starting on Monday.

THE COURT: Well I'll move it back a week then. Do you want it moved back a week, Mr. Izen?

MR. IZEN: What would that give us? July 23rd?

THE COURT: That's correct.

MR. IZEN: July 23rd at 10:30?

THE COURT: I would make it earlier because I'm on criminal duty that day. I would make it a 10 o'clock conference on the 23rd.

MR. IZEN: That should be acceptable, Your Honor.

THE COURT: Would that work for you, Mr. Nork?

MR. NORK: Yes.

THE COURT: And for you, Mr. Unger?

MR. UNGER: That's fine, Your Honor.

THE COURT: Okay, then we're set up 10 o'clock on the 23rd. It's a telephonic conference. I do want the questions regarding the phone records to be disposed of. I do want Mr. Izen to move regarding Mr.Hamshaw's phone records. And I do want Mr. Izen to resolve the Massachusetts deposition of Mr. Doyle. I will also have by that time have entered either on my signature or Judge Gleason will have dealt with the letter rogatory. And I want an update from you, Mr. Izen, as to what the Court can expect. The deadline for discovery will, therefore, not be set today until we find out whether or not Atil's deposition can be scheduled at a date certain. The

Court does not intend to give Mr. Izen more than he has already
put into play here. It's Mr. Atil's deposition that is causing
the Court to extend the deadline again. Is there anything further the Court needs to address today, Mr. Izen?

MR. IZEN: No, Your Honor, except that since we'll be giving a report I would like to make one point. Letters rogatory if possible for some sort of record production on Swiss Com. So if Mr. Nork can't or doesn't, or his client doesn't, or whatever with the records, it's a possibility to try to force Swiss Com to produce them. I will direct that in a rogatory with your permission.

THE COURT: Well what I would suggest, sir, is before the next date of our telephonic conference that you and Mr. Nork speak, because Mr. Nork is being sent back to his client on instructions from the Court to try to hand over invoices detailing what telephone service at Echo Merit during the relevant periods. And again, Mr. Nork, that would be a lot more burdensome than just getting Telecom to produce the records. So again I'll leave that to you. But before the next date in July, I do want Mr. Izen and Mr. Nork to discuss this matter so if it could be resolved between the parties the Court will not need an additional matter on its plate. Mr. Nork, is there anything further from your perspective today?

MR. NORK: No, Your Honor.

THE COURT: And, Mr. Unger, is there anything further?

MR. UNGER: No, Your Honor.

THE COURT: Okay. Then this matter is going to be adjourned. I will be expecting to hear from you next week. of course anything that you're giving to the Court -- and you're going to send it, you're not going to fax it to the Court, Mr. Izen --

MR. IZEN: Yes, Your Honor.

THE COURT: -- you will likewise give to your colleagues, Mr. Nork and Mr. Unger. So that will be done by next week. I will be expecting to see it by the 18th. And then we will be back on the line together on July -- I'm sorry -July 23rd at 10:00 a.m. And Mr. Nork or Mr. Unger, whoever was responsible for lining up the conference today, if you could please take responsibility for lining up the conference on that date.

MR. UNGER: Very good, Your Honor.

THE COURT: Okay. With that, this matter is adjourned and we will be back on with you on July 23rd. Thank you very much. Good-bye, gentlemen.

MR. NORK: Thank you.

(Court adjourned)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

_____ 7-10-03____

Signature of Transcriber Date

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SHERIFF SAUDI,

Plaintiff,

v.

MARINE ATLANTIC, LTD, et al.,

Defendants.

CV-02-2495 (JG)(LB)

July 23, 2003

Brooklyn, New York

TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE BEFORE THE HONORABLE LOIS BLOOM UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: JOE ALFRED IZEN, JR., SQ.

For the Defendant: THOMAS NORK, ESQ.
MICHAEL UNGER, ESQ.

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Proceedings recorded by electronic sound recording, transcript produced by transcription service

THE CLERK: Civil cause for telephone conference, Saudi versus Marine Atlantic, et al., docket number CV-02-2495.

If the parties would please state your names for the record. For the plaintiff?

MR. IZEN: Joe Izen.

THE CLERK: And for the defendants?

MR. NORK: Tom Nork, Judge.

MR. UNGER: And Michael Unger.

THE CLERK: The Honorable Lois Bloom presiding.

THE COURT: Good morning, Mr. Izen, Mr. Nork, Mr. Unger. How are you all today?

MR. IZEN: Okay, your Honor.

MR. NORK: Fine, Judge. Good morning.

THE COURT: Mr. Izen, I told Mr. Nork to give you another -- Mr. Unger or Mr. Nork to give you another try because they were trying to get you at 10:00 on the dot, but here we are. At the last conference, the Court had directed plaintiff to submit his application for a letter of request to depose Surinder Atil (ph) by July 17th. Plaintiff was also supposed to depose Gregory Doyle and request phone records from Robert Hanshaw (ph).

The Court had directed defendants to review their client's phone records from 1994 to 2002 by July 11th, 2003 and to produce any records reflecting calls to or from a New

York number. The letter of request was filed and the Court made certain suggestions to plaintiff for him to resubmit the letter.

Mr. Izen, have you gotten to resubmit the letter?

MR. IZEN: I have not submitted the letter. That the order that you gave me gave me a specific period of time to do it.

THE COURT: Yes, that was today.

MR. IZEN: Yes, ma'am.

THE COURT: So you will be submitting it?

MR. IZEN: The only thing is I've had problems with completing the (ui) official translation.

THE COURT: Would it help if I gave you an extension until Friday then, sir?

MR. IZEN: It would. I apologize to the Court but I had a brief and extensive appendix of the Third Circuit in appeal with Mr. Saudi which had to go out over the period of time.

THE COURT: What was in the Third Circuit that Mr. Saudi --

MR. IZEN: There was a suit filed on Acomarit in the Third Circuit. That's Thomas Garrett's (ph) residence. He was Acomarit's port captain. The Court of Appeals in Pennsylvania found that there was on jurisdiction there on the motion to compel in that case, too, which was denied,

which had sought Acomarit's phone records with Mr. Garrett. Those phone records were not available, either. There is an appeal on that matter and that's what had to be briefed.

THE COURT: Mr. Izen, if by the 25th you can get in the letter with the translation, that will be just fine, sir.

MR. IZEN: Okay.

THE COURT: That will give you a couple more day's breathing room.

MR. IZEN: I sure appreciate it.

THE COURT: Mr. Izen, whatever else I give you credit, sir. If I was an injured plaintiff, I'd certainly want somebody fighting for me the way that you seem to be fighting for Mr. Saudi. But let's get back to our business here.

The letter of request shall be filed with the Court by Friday, the 25th of July. The Court will then forward it to the Swiss authority. The defendants submitted to the Court what they say were their efforts to get phone records. They detailed the requests that they had made and the answer of Swisscom was that the only have six months of records. They also say that Hanshaw had written to AT&T and Sprint to get records.

But if I tell you that those letters to AT&T and Sprint were written hoping that AT&Tand Sprint would write

back saying we don't keep records for more than six months-- I had no doubt that whoever wrote those letters for Mr. Hanshaw to AT&T and Sprint were hoping that the response would foreclose any records. But in fact they didn't and they just said that they would require something further.

Mr. Izen, have you followed up with Sprint and AT&T?

MR. IZEN: I have not followed up with Sprint and AT&T yet. I have concluded that I should take deposition on written questions.

THE COURT: From Sprint and AT&T?

MR. IZEN: Yes, your Honor.

THE COURT: How about subpoenaing their records, Mr. Izen?

MR. IZEN: I'd need a hearing to subpoena them, I believe.

THE COURT: Why would you need that. If they just produce the records,why can't you serve on them a subpoena?

MR. IZEN: I guess I could subpoena them. I may be missing something in my years of practice but I understand that I have to have a hearing at which to subpoena them.

THE COURT: I don't think that's correct, sir. Wait one moment.

MR. IZEN: I will have learned something new if

that's the case. I thought I had to have a hearing.

THE COURT: I understand why you thought that but I think that they can just turn over the records if you don't need somebody to authenticate the records at this point in time.

It says under 45(a)(1)(d) that a command to produce evidence or to permit inspection may be joined with a command to appear at trial or hearing or at a deposition or may be issued separate. So I don't think that it has to be that they have to attend a hearing. It says under (d)(2) that if separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the Court for the district in which the production or inspection is to be made.

So you're going to have to get the subpoena from the Court where the production or inspection is to be made. I don't know where Sprint and AT&T are located and subpoena power is within 100 miles if you're commanding a person to appear. But if you're just saying that documents need to be produced, I don't think that you're going to have that sort of problem.

In fact, if I recall correctly, the letter that was included from the Sprint representative -- I'm turning I think to -- it's after Exhibit 17 to the letter from -- it's the July 8th letter from Mr. Nork, is it, who wrote this

letter? Yes, Mr. Nork wrote the letter and it's after Exhibit 17. It says, we will not provide the records without proof that the opposing counsel has been notified of the subpoena. Please fax this proof of service to our office at, and they give you a fax number.

Once we receive this notice, we will release the records ten business days from the date of service, provided opposing counsel does not file a motion to quash. Then it says, should you have any further questions or inquiries, please contact the Sprint subpoena compliance unit and gives a phone number.

So, Mr. Izen, I understand that you have a lot of different things you're trying to cover here but it's all laid out in that letter and that letter is, as I said, attached to the July 8th Nork submission to the Court and the letters dated to Mr. Hanshaw of May 20th, 2003. So it's telling you exactly what you need to do to get these records and I don't think they really care which court issues the subpoena. You're not going to subpoena a person, you're just going to subpoena the records, and you're going to have to serve Mr. Nork and Mr. Unger with copies, in any case.

Are we clear, Mr. Izen?

MR. IZEN: Yes, your Honor, we're clear, as long as there's no need to have a hearing.

THE COURT: Why don't you take Sprint at their

word and contact their Sprint subpoena compliance unit and say, if you have a subpoena from a federal court and it's just requesting records from one of their customers and they already have a letter on file from Mr. Hanshaw requesting those documents -- but again, I wouldn't rely on Mr. Hanshaw's letter because it does try to get an answer of no, there are no records.

It says it goes back two years and it also says, Sprint will also access a cost-recovery fee for the above-referenced case. But it says that Sprint only maintains call-detail records two years prior to the current date. I don't know what the call-detail records are. Maybe they have call-un-detail records for many more years. But if I were in your shoes, I would be pursuing that, Mr. Izen.

MR. IZEN: Yes, your Honor.

THE COURT: How long do you need to do that, sir, because we were again trying to close this out. I was letting you do the deposition of Mr. Atil and we were trying to get these records regarding the phone usage.

MR. IZEN: That can be done a lot more rapidly that Mr. Atil's deposition.

THE COURT: I understand that, sir.

MR. IZEN: I think I can complete that in seven days.

THE COURT: I wont cut you off that short but why

don't we say by the end of next week, which is the first, you'll pursue the records regarding -- will that give you enough time?

MR. IZEN: That should give me enough time for Mr. Hanshaw.

THE COURT: It's Sprint and AT&T that you're pursuing and you've gotten a head start on Sprint's compliance number for subpoenas. I'm sure that the people there that they employ, that's all they do. So they'll be able to walk you through and if what you need is something from the Court, you know how to get back in touch with the Court.

MR. IZEN: Yes, your Honor.

THE COURT: I apologize to Mr. Nork and Mr.Unger. I had faxed out to Mr. Izen the order regarding his obligations to revise his letter request, but I had relied on the clerk's office at the courthouse to docket and send out to the two of you that order. By yesterday I had my clerk check and they had not yet sent it out, so I had it Fed Exed or faxed. I had it faxed to both of you so I'm sorry that that wasn't done at the same time. I just thought that the clerk's office would be more up to date this summer.

The other things that we had to discuss today is a little bit of housekeeping. I would like to get Mr. Nork to

file an original of your July 8th letter, or was the one that you sent to me the original, Mr. Nork, because there doesn't seem to be one that's on file with the Court and I want to get one into the Court's records.

MR. NORK: I'll be happy to file that, Judge.

THE COURT: Okay, because again I do have my copy upstairs but I looked for it downstairs at the same time that I was looking to see whether or not my order had been sent and there is not one in the Court file. You could forward it to me and I'll make sure that it gets put into the Court file.

MR. NORK: Thank you, Judge.

THE COURT: Then we also still have the binders of documents that were submitted to Judge Gleeson for the in camera review and we've spoken to Judge Gleeson's clerk and they suggest that you can either retrieve them or we can throw them out if you don't need them.

MR. NORK: Judge, we'll retrieve them. We don't have a full copy here and it probably makes sense for us to have one.

THE COURT: Why don't you send with a copy of the July 8th submission that you're going to send to my attention -- why don't you send a mailer with your firm's Fed Ex and I will just put the binders in a box.

MR. NORK: Okay, thanks, Judge.

THE COURT: Will that work for you?

MR. NORK: Yes, Judge.

THE COURT: Okay. Let me ask, Mr. Izen, is there anything else that the Court needs to address today?

MR. IZEN: I would like to address two things, with your permission.

THE COURT: Yes, go right ahead.

MR. IZEN: Number one, I view the issue of Swiss foreign law as being a fact issue that is proven out by coming to the Court, although it can be a matter of judicial notice. I did get your order and I did get Mr. Nork's letter. I have been making an effort to obtain that particular Swiss statute. If I'm able to find that Swiss statute, the exact wording of the statute, it may be that I will want to call the Court's attention to the content of the statute.

In a letter that was submitted in the translation Mr. Nork speaks of tax receipts. I do find it incredible that a country operates with a phone system where even the government could not get detailed phone records from the phone company of who has called within the last six months.

THE COURT: Mr. Izen, with all due respect, you have to remember that Switzerland was the only country in Europe that remained neutral during a World War, so you couldn't tell me anything about Switzerland that would be

somewhat surprising to me, sir. But if what you're asking is when you find the portion of the law that you think would bear on your right to get these records or what records are maintained, yes, you can bring your application to the Court.

I don't know that I am going to reconsider my position. I don't want to -- my whole mission here was to permit you to do the discovery so that you could try to establish that there is sufficient connection to New York so that this Court has jurisdiction. How the Swiss run their nation is not really going to be something that this Court is going to want to go too far to consider.

MR. IZEN: I understand, your Honor.

THE COURT: What's the next issue, Mr. Izen?

MR. IZEN: The next issue is simply a report on the efforts to get Mr. Doyle's deposition.

THE COURT: Yes.

MR. IZEN: This dates back to your June 9th letter -- I mean your ruling which you made June 9th, 2003. I've been in touch with Mr. Duffy (ph) at Fitzaler, Rodriguez & Chalice (ph). It's over in Oyster Bay on Long Island. He contested the deposition before and did it in front of a New York court. Of course, nothing came of that because you have to contest your deposition notice that you were served or your service in the district and get it quashed if you

can or the depositions won't take place.

We were out expenses that we never got. We had to pay uncancellable reservations. I wrote a letter in July, 2003 requesting a time to take the deposition but also requesting the documents be delivered in advance of the deposition. I requested the costs that were non-cancelable. It was something like $400 to $600. He asked additional time to respond to my letter, was sent on or about July 8th, 2003.

On July 18th, he responded back and he's still refusing to appear for deposition. He's refusing to -- he says the discovery deadline is over with in this case and I violated orders from the Court. I don't know where he's getting his information. This was an argument he used last time, which was not sustained. So it looks and appears as if a court hearing will have to be held in Massachusetts to, among other things, set that time for that deposition or force it to go forward.

THE COURT: Have you been in touch with that court there? It was that court that issued the subpoena.

MR. IZEN: I have been in touch with the court to find out about what scheduling would be on a motion on that and they treat it as some kind of miscellaneous motion.

THE COURT: Right.

MR. IZEN: You can get hearings within about two

to three weeks on those over there. That's in Boston. This actual deposition was supposed to be taking place near Brookline. I think it was actually in Cambridge, in a hotel we had there, the Hyatt Regency.

Anyway, Mr. Duffy's letter came in July 18th, 2003, in which he refused to go forward or produce the documents. The point is whenever I sent these depositions, they always get there and they say that they haven't had enough time to get their documents together and so on and so forth. He apparently is getting information from somewhere that gives him hope that somehow he's not going to have to give this deposition.

THE COURT: Mr. Izen, how could the Court assist you in that regard because I'll be more than glad to put into an order today that the discovery period has been extended in this case to allow you to take the Doyle deposition in Massachusetts. Will that be helpful to you?

MR. IZEN: Yes, your Honor. That would at least remove the idea that somehow I'm violating your order by taking the deposition.

THE COURT: Again, I'll make it clear in the order that the deadline has been extended and I would like you, though, to get on with this because the Atil deposition and the Doyle deposition are what's outstanding from my perspective and I understand you can't control the Swiss

authority but you can control when you get the letter of request in to the Court to get out. So I've given you until the end of this week to do that and then this Court will forward it to the Swiss authority.

As to the Doyle deposition, I would like you to move by the middle of September -- September 15th is a Monday -- in the District of Massachusetts. That doesn't say that it will be resolved by that date. But if I'm going to say that the discovery deadline has been extended to permit you to take the deposition of Doyle in the District of Massachusetts and that the plaintiff is given until September 15th to move before the District of Massachusetts to compel the deposition, will that give you enough time?

MR. IZEN: That will be fine, your Honor.

MR. LETOURNEAU: Judge, this is Keith Letourneau. I was wondering if we may reply.

THE COURT: To the request for taking Doyle's deposition. Reply to what?

MR. LETOURNEAU: Reply to what's just transpired, Judge, in terms of --

THE COURT: Are you representing Doyle?

MR. LETOURNEAU: No, Judge, I'm with Mr. Nork.

THE COURT: Yes, I understand that, Mr. Letourneau. So I'm asking why would you have any say in whether or not the Court is permitting Mr. Izen to go

forward with the deposition of a nonparty?

MR. LETOURNEAU: Judge, this relates really to the continuation of the discovery period in this case.

THE COURT: I understand, but where Mr. Izen has been at fault, he'll be prohibited from moving forward. But when he's not at fault and it's clear to me that if he noticed the deposition in June and that he wrote a follow-up letter in July and that by July 18th they decided they weren't going to comply with the deposition, that Mr. Izen has been working within the parameters set by the Court.

MR. LETOURNEAU: Judge, that's what I would like to address, if you would permit me.

THE COURT: Yes, go ahead, Mr. Letourneau.

MR. LETOURNEAU: Judge, the original deposition notice -- the subpoena was not supported by appropriate fees and therefore it was defective on its face. Subsequently, Mr. Izen did not issue another subpoena, in accordance with law to Mr. Doyle, to have him appear within the time set by your June 10th hearing. So consequently, Mr. Izen has not accomplished what he was required to accomplish by today, in accordance with your previous direction at the last hearing. Consequently, there is no excuse for the continuation of the discovery period to take Mr. Doyle's deposition.

THE COURT: So your position, although you do not represent this witness, is that this witness was not served

with the $40 witness fee when his subpoena was originally served and therefore, instead of responding in June, he responded in the middle of July and then said that he wasn't going to comply. Is that your position?

MR. LETOURNEAU: Your Honor, that is certainly part of it. But as we appreciate it - of course, you don't have copies of the correspondence that was exchanged between Mr. Duffy and Mr. Izen that we have received -- Mr. Duffy has repeatedly attempted to contact Mr. Izen for purposes of trying to reschedule that deposition and has apparently been unable to do so. So you're not exactly hearing the complete story about what has transpired in terms of the arrangements for Mr. Duffy's deposition.

MR. IZEN: Can I speak, Mr. Izen?

THE COURT: Yes, Mr. Izen.

MR. IZEN: I totally refute Mr. Letourneau's comments. It is true that Mr. Duffy claims he was attempting to contact me. I was out of town at the time and when I tried to contact him, he was not available. He asked for an extension of time of ten days to respond to my letter and I did. These claims that there's been no service apparently are emanating from Mr. Nork and Mr.Letourneau, even though Mr. Duffy has his own attorney. That's the problem I face in this case. They come up with dramatic ideas about how this "i" was not dotted or this "t" was not

crossed. Many times they're in error.

This happened in the Pennsylvania case, where they continued to attempt to quash depositions and they were not successful except once out of six times. I don't want to go through the whole story there. It's just frustrating to have a counsel on the other side manipulate all the witnesses like they represent them all.

THE COURT: Mr. Izen, you are given permission of this Court. The Court is going to put it into an order that the time to depose has been extended. If during the next month and a half you're facing similar extensions without responses, et cetera, write to the Court in the mean time so that there's not a question at the end of the period of what you've done and what efforts you've made.

If Mr. Doyle is represented by Mr. Duffy and they have a problem with how the subpoena was served, then re-serve the subpoena. Give them, under 28 USC 1821, the required witness fees, which I believe is at $40 a day plus mileage, so they may be claiming that you didn't give them the proper mileage. If it was within the City of New York, you would have give them $40 when you serve the subpoenas and the mass transit fee of $2 each way for subway fare, but I can't tell you what you'd have to do in Boston.

MR. IZEN: I understand, your Honor.

THE COURT: So dot your "i"s and cross your "t"s,

sir. I will not allow them to claim that they don't represent this witness and yet make claims on that witness's part that you have failed to live by the Court's order. I will give you until September 15th.

MR. IZEN: All right, your Honor.

THE COURT: I wish that all of the good lawyering skills that have been shown in this case would be put towards finding a way to settle this claim because it looks like Mr. Izen is going to keep on this. It doesn't look like the Third Circuit case is -- I have to say it can't be a cost-effective way to be dealing with this action, to be running all over the world.

But again, I'm not the client and as I said, Mr. Izen, you have to do everything better than they are doing it in order to get into the ball park. We're not even in the ball park yet and they know that. So once you establish jurisdiction, then the fun will really begin, but I understand that's aways from here and Judge Gleeson will decide that once the discovery period concludes.

So we have two matters outstanding from my perspective. We have the Doyle deposition, which I am telling you that you must move in Massachusetts to compel the discovery. I would say serve the new subpoena with the new -- whatever the fees were that they say were defective in the first and at the same time be going in the court to

compel that deposition to go forward.

If Mr. Duffy, who is in Oyster Bay, Long Island, is representing Mr. Doyle, who is in Cambridge or the suburbs of Boston, contact Mr. Doyle as soon as you get off the line here and say that the judge has extended the time and you want to set the date and you don't want the date to come and go, and how can you work this out?

MR. IZEN: Your Honor, let me just state one other thing if I might; that I, like many out-of-district attorneys, have used services to serve the subpoenas. The service informs me that they paid these fees. So whenever Mr. Nork or Mr. Letourneau states something, I don't take it as a judicial fact.

THE COURT: I understand that.

MR. IZEN: I'll (ui) to the fact issue to try some morning in front of a judge in Massachusetts on a miscellaneous proceeding of some process server claiming he gave him a check and claiming they didn't get it.

THE COURT: I'm sure that that would be an exercise that that magistrate judge up in Massachusetts would relish. So I'm saying we're all a little too busy for this, gentlemen, and to whatever extent Mr. Nork and Mr. Letourneau have contacted Mr. Duffy, let's cut to this, okay? Mr. Doyle's deposition should go forward. If there's more monkey business, I'll extend the deadline.

Do you understand me, Mr. Letourneau and Mr. Nork?

MR. NORK: Judge, I understand you loud and clear. I fully appreciate your solid position in this case, which I've appreciated in all of our telephone conferences. Judge, there's no monkey business going on here. I want that to be clear for the record.

THE COURT: I'm sorry, maybe I shouldn't have said monkey business. I think it's more like a well-executed game where the ball is under the cap and you keep switching the caps around. All I want is for him to get these two depositions done and then we'll call it a day, and you'll make your motion before Judge Gleeson that you were ready tomake a year ago, and you'll say there's no jurisdiction in the Court and Judge Gleeson will be able to say yea or nea.

MR. NORK: Judge, there is no three-card monty. That we insist on adhering of the federal rules of civil procedure should not be held against us. One last issue, Judge, and I appreciate your time on this very much. We have tried to settle this case, Judge. We're not half the lawyers you make us out to be but I appreciate your comments in that regard.

We've been fighting this fight for going on four years now and we're losing clients over this. We have no joy or enjoyment in this case at all. We're simply defending our client's interests and we have tried to

resolve it. I'll go no further than to say that because it's not appropriate to do so, but I just wanted you to know that.

THE COURT: I appreciate that and the reason why I'm making those comments is it's clear that you're all good lawyers but that this case could not be resolved in the number of different battles -- Texas, now I'm hearing about Pennsylvania, now we're in New York.

MR. NORK: Don't forget about Maryland.

THE COURT: I didn't know about Maryland. Thank you for pointing it out. Then we're going to go over to Switzerland for these depositions. It just seems incredible to me. Believe me, I've seen some incredible battles but it seems incredible to me that there can't be some resolution when the parties are expending these sorts of resources.

MR. NORK: We sincerely wish there could be and that's not to mention the case that Captain Saudi has pending in Virginia and Wisconsin, too, Judge. I just thought I'd throw that in.

THE COURT: Mr. Izen, I don't know what the status of any discussions have been regarding settlement. I don't know that any court took the time to try to get you closer together on the page. Maybe there is no way to settle the case. But if you were to tell me that the amount of resources spent on fighting this thing had been spent on

trying to settle this thing, I would be quite happy, because I would think if all these resources were spent towards resolution instead of litigation, that there might have been some progress.

MR. IZEN: Your Honor, to speak to that, there has not been near the resources spent on settlement as there has been on litigation. But so that you won't be misled about Acomarit or Marine Atlantic's involvement, it is true that they had a port captain resident in Pennsylvania and they were sued there. It's also true that he had an office in Maryland and they were sued there.

But it's not true they were sued in Wisconsin and it's not true that they were sued in the other place Mr. Nork mentioned, Virginia. Virginia was where the vessel was originally constructed, which had a crane that could easily corrode with enclosed gears that nobody lubricated. That's Gruman (ph) that took over for Newport News shipyard. It's true that Gruman was sued there. It's also true that Appleton, the people that built the crane, were sued in Wisconsin, but Acomarit wasn't sued there.

You've got to keep in mind that every defendant wants to pass the ball of liability over to the other one, so that's what's going on there. There was always a reason to sue Acomarit wherever they were sued.They always turned out to have some connection, regardless of what they said in

their first pleadings in Houston. There was somebody that was their port captain in Pennsylvania. They had an office and a joint venture arrangement in Maryland. That's what we are claiming on appeal.Then we have Hanshaw in New York.

So although it seems I've done heroic efforts, if I had not done this for Captain Saudi, he would not have all of the remedies that he would be entitled to. Unfortunately, the jurisdiction in this country is if you don't make Rule 4k2 jurisdiction, you have an argument in each state as to whether they have sufficient contacts. That's all I can tell you, but I didn't want you to think we have sued them anywhere without some basis.

THE COURT: Mr. Izen, as I said, I complimented all of the attorneys on their lawyering. It just seems that if there was -- I understand that you're not going to get Mr. Letourneau, Mr. Nork or Mr. Unger to settle the Gruman part or to settle the crane part. But if there was any way that all the efforts -- without casting any aspersions on anybody here.

I was on a federal civil practice forum. This was sometime in the spring, where one of the big firms in New York was talking about international litigation, and they basically said if you could hold them to just doing jurisdictional discovery, they're way, way, way down that ball field. They can't even see the goal line from being

that far down on the field.

That sort of stuck in my mind when I started dealing with you all back when Judge Gleeson had referred the case, that we're way down the road from establishing liability here. Of course, that's where Mr. Letourneau, Mr. Nork and Mr. Unger, with all of their good skills, would like to keep you, Mr. Izen. Again, they're representing their client the best way and that client is probably paying for that representation, so that's the way the system works.

I understand, Mr. Izen, that you've been chasing them in various different venues. That's your option for your client. But how it's all going to turn out after all these efforts are expended, that's something that none of us know and it just seems that there's a lot of energy being spent toward what could be naught, where if it could be spent toward working out some sort of deal where there are no more suits, there are no more foreign depositions or nonparties or bank records, all of it, it could be just resolved. Then Mr.Saudi would have something and Mr. Izen would go away and everybody would move to the next case.

MR. IZEN: I appreciate that, your Honor. With your permission, just let me say that we've attended their mediation. We're happy to consider that in this case. Last time mediation was offered, it was by the Fourth Circuit mediator that was appointed and my recollection is it was

refused by Mr. Nork and Mr. Letourneau on the basis that their client didn't believe there was anything that they wanted to mediate.

THE COURT: If you're Fourth Circuit mediation panel is like our Second Circuit mediation panel, most of the time those people just want to convince you to withdraw your appeal. They're not really getting to numbers and bottom line. There is a mediation panel attached to this Court, although there is no requirement at this point in time that anybody avail themselves of it. I would believe in New York that you would probably get people who have quite good international commercial experience.

So I'll just throw that out there. I'm not going to keep you on that. I am going to wrap this up by saying that the Doyle deposition will go forward, that plaintiff is going to be given until September 15th to move in the District of Massachusetts or re-serve at his choosing, and that if he is having problems because Doyle is, for whatever reason, not cooperating in setting up the deposition, Mr. Izen shall inform the Court and not wait until the deadline has come and gone.

MR. IZEN: Yes, your Honor.

THE COURT: By the 25th, which is this Friday, Mr. Izen shall resubmit the version of the letter of request that shall be forwarded to the Swiss government for the

deposition of Surinder Atil and that you will pursue the records that Sprint and AT&T have regarding Robert Hanshaw and you will make those efforts by August 1st.

Those deadlines are being set now, Mr. Izen, to move you to do these things. When the Third Circuit gives you a deadline, you move it. So please move on these and if for any reason you need an extension, please request it before that deadline.

MR. IZEN: Yes, your Honor.

THE COURT: Mr. Letourneau, Mr. Nork and Mr. Unger, you shall resubmit to the Court the July 8th submission, so that there can be an original of that filed with the Court. You'll submit that to my chambers with a Fed Ex slip that I will then package up, the documents that were submitted for in camera review and return those to you.

MR. NORK: Okay, Judge.

THE COURT: Is there anything further, Mr. Izen, that the Court needs to address today?

MR. IZEN: No, your Honor, except I have one question of clarification.

THE COURT: Yes.

MR. IZEN: I'm looking at my notes from your order concerning authority on the letters of request. The Hague Convention speaks of a certified translation. The certification that I get on that I'm a little cloudy on.

Does it come from the Swiss?

THE COURT: No. My best guess is that whoever the translator is -- like if you had a court interpreter, they would certify that they have, truly and to the best of their ability, translated the documents. I would approach one of the courthouse interpreter staff, because they will know people who are -- there are actually tests in only three languages in the federal courts and that's Spanish, Haitian Creole and Navajo, so that's not going to help you.

They're not going to have a French interpreter that's certified by the Court, but there are going to be lists that they use when there's a French-speaking defendant and they will be able to give you one of those people. One of those people will know how to certify a document. It's like swearing during the proceeding that they have interpreted the proceedings accurately.

MR. IZEN: I appreciate that input. I was just concerned that it might be a certification that was required by the Swiss system that it was accurate.

THE COURT: I can't imagine that that's what they're talking about because the whole process as set forth in the Hague Convention is to get the other countries to supply something to them, so I can't imagine that the certification is through the Swiss setup. I think you just need to get whoever is doing the interpretation of the

document to have whatever -- it's not like a notary stamp but whatever they would put on a document to say that it's been interpreted to the best of their ability and sworn to on such and such a date.

MR. IZEN: Thank you for that input.

THE COURT: Anything else, Mr. Izen?

MR. IZEN: No, your Honor.

THE COURT: Anything, Mr. Letourneau, Mr. Nork or Mr. Unger?

MR. NORK: No, Judge.

THE COURT: I'm going to set a control date after that 9/15 cutoff on this, to keep things moving. I don't know how long it's going to take once the letter is sent from this court to the Swiss authorities, but I'd like to set a conference by phone again to make sure that everything has been done and then we'll just be waiting to hear when the Surinder Atil deposition has been conducted and concluded, and that should conclude the discovery in this litigation.

How do your calendars look for a September 30th phone conference, gentlemen?

MR. NORK: That's fine with me, Judge.

THE COURT: That's Mr. Nork?

MR. NORK: Yes, your Honor.

THE COURT: Mr. Izen?

MR. IZEN: I believe that's okay, your Honor.

THE COURT: Mr. Unger?

MR. UNGER: Your Honor, would it be possible to have that in the afternoon?

THE COURT: It would be possible to have it anytime that you tell me that you all can make it.

MR. UNGER: Say 2:00 our time, Judge.

THE COURT: Which is what time NewYork time? Are you ahead or behind?

MR. UNGER: 2:00 New York time, 1:00 Texas time.

THE COURT: 2:00 New York time, 1:00 Texas time. Would that work for you, Mr. Nork and Mr. Izen?

MR. NORK: That's fine.

MR. IZEN: I believe the 2:00 will be okay, your Honor.

THE COURT: Then I'm writing you in for a 2:00 telephonic conference. Please call in the same way that you did today. Can I impose upon you again, Mr. Nork, to call in on that date?

MR. NORK: Okay, Judge.

THE COURT: Then that is our status conference and at that point I hope that we will have some word on when the Surinder Atil deposition will be held and then we can wrap this matter up.

Thank you all for your cooperation. I will get

out an order as discussed at today's conference.

* * * * * * * *

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

_____

ELIZABETH BARRON January 31, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CAPTAIN SHERIFF SAUDI,	:	
Plaintiff,	:	
	:	
vs.	:	NO. 02-CV-2495
	:	(JG)(LB)
MARINE ATLANTIC LTD., MONTE	:	
CRISTO SHIP HOLDINGS, LTD.,	:	
ACOMARIT MARITIMES	:	
SERVICES, SA,	:	
	:	
Defendants.	:	

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ORAL DEPOSITION OF

JACQUE LOUIS BILLE

March 27th, 2003

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ORAL DEPOSITION of JACQUE LOUIS BILLE, produced telephonically as a witness at the instance of the Plaintiff, and not duly sworn prior to the testimony, by agreement of counsel, was taken in the above-styled and numbered cause on the 27th day of March, 2003, from 8:57to 10:09 a.m., before Margaret A. "Peggy" Taylor, CSR, in and for the State of Texas, reported by stenographic means, at 5526 McKnight Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure, and the provisions stated on the record or attached hereto, including a stipulation regarding the oath not being administered to the witness.

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MR. NORK: We will stipulate again to attach a signature page verifying that the contents of the deposition transcript is honest and true testimony. And his signature on the page stating that will be notarized, and we'll stipulate that the transcript can be used for any and all purposes in the litigation as if it was a statement taken pursuant to being sworn in by the court reporter.

MR. IZEN: That would be, I accept that stipulation. With those preliminaries aside, give me just 20 seconds; and I'll be ready to proceed.

(Off the record.)

MR. IZEN: Okay. Ready to go.

EXAMINATION

BY MR. IZEN:

Q. Would you state your full name for the record, lease, sir?

A. Good morning. My full name is Jacque in French. It's like Juliette Charlie Quebec uniform. My second name is Louis, L-o-u-i-s. And my family name is Bille, B-i-l-l-e.

Q. All right. Mr. Bille, my name is Joe Izen. Do you go by the -- do you use the word captain to describe yourself?

A. I used to be a sea captain; and this title, if

you can call it, title remains with my name, yes.

Q. Okay. It remains with your name. All right. Captain Bille, my name is Joe Izen. I represent Captain Sheriff Saudi who was a mooring master or still is. And he was injured May 15th or 17th, 1999.

Would you state your present address for the record?

MR. NORK: Again, Joe, that's confidential here in Switzerland. We can furnish his business address; and anything that you need to send to him, I'll be delighted to receive it and forward it on.

MR. IZEN: Well, certainly I will do that. I mean, if there is some reason why I need his personal address, I'll think about it; and I'll file the appropriate motion. But for communication purposes, I don't think I need it for communication; and I will accept your stipulation for that.

MR. NORK: Thanks.

MR. IZEN: We're just dealing with communication. If you let him give me his business address, I'll direct communications through you until I get notice that you're no longer representing him, if that happens.

MR. NORK: Okay.

Q. (By Mr. Izen) Would you state your business

address?

A. Yes. Put my name, Captain Jacque Bille, care of V Ships, Switzerland, SA, 21-23, Roux is L, A, local, uniform and Cioz is Charlie Ina Oscar Zero, Oscar 12.

Q. The court reporter is having a little bit of trouble, and you've been spelling by using the international alphabet with the name such as Charlie and easy for C and E. Would you please give us that again slowly?

A. Okay. The company's name is V Ships in one word, V Ships, Switzerland SA. The street address is 21 dash 23 Vue du Claire. I'll spell for you in the international. Venezuela, uniform, echo. Du is dental, uniform. And Claire is Charlie echo zero.

MR. IZEN: I'm going to go on to something else, Mr. Nork. The court reporter had a little bit of trouble following that. But I'm sure you could give us that.

MR. NORK: I will do it.

MR. IZEN: So, if we have a need of it, she will contact you here in Houston or whatever; and I'll go on.

Q. (By Mr. Izen) I want to apologize to both of you. I'm not in top form. My voice is hard to understand. So, if you need me to repeat anything,

Mr. Bille, you can certainly ask me to do so.

A. I will.

Q. I'm trying to go as slow as I can to make my question distinct. Now, we're going on a speaker phone. Have you ever given a deposition before?

A. Yes, I have.

Q. How many times before?

A. As far as I remember, only once in my life.

Q. And was that in connection with your work with Acomarit in any capacity?

A. Yes. It was in connection with my role as general manager of Acomarit Services Maritimes in Geneva.

Q. Do you ever, have you ever given a deposition in the United States before?

A. No, I never did.

Q. Have you ever given a deposition in any lawsuit other than one in the United States?

A. In only what?

Q. Have you ever given a deposition in a lawsuit in the United States other than today?

A. In a lawsuit, no, never.

Q. What is your present position that you hold today, if any, with Acomarit Geneva or V Ships Switzerland?

A. My present position? Acomarit Services

Maritimes Geneva, which became V Ships Switzerland, SA, in May 2001, is general manager.

Q. What does the general manager do for V Ships Switzerland?

A. Basically, I run the office under the supervision of the managing director.

Q. As part of running your office, do you deal with records?

A. I don't deal directly with records, but I have a clear understanding of what happens to the volume of paperwork which is passing forward in the office.

Q. Presently does V Ships Switzerland maintain records in an electronic form concerning finance or operations of vessels that it manages?

A. You must understand that V Ships is a manager is a manager, management company, a service company.

Q. Right.

A. And we manage a certain number of ships. And each vessel has its own, own account and own records. So, for each vessel, there are records kept, yes.

Q. Now, these records are kept on an individual vessel basis based on which vessel V Ships Switzerland is managing?

A. Yes. It is, the management business works in this way. Each vessel has a budget; and we work in a

basis, on a yearly basis. At the end of the year we close the year. It may take three or four months. And then, that year is closed; and we start the new year. The records are kept for three years and then discarded.

Q. Three years?

A. Three years. We keep records for three years.

Q. Now, when does that three-year period end? When the year is closed?

A. In the year 2001, would be destroyed in 2004.

Q. Now, this five-month period, what happens during that five-month period? Why is that significant?

A. Sorry?

Q. You said you kept the records for a year and then they were closed, the year was closed. And then, you said something about a five-month period.

A. I didn't say five months. I said it takes about three months after the end of December to close the previous year. And then, when the accounts are closed, we file it. And three years later, they are gone.

Q. Now, did any other company become part of V Ships Switzerland other than the old Acomarit Geneva?

A. Acomarit, SA, in Geneva became V Ships, SA, Geneva.

Q. What I asked was: Was any other company other and Acomarit Geneva, did any other company other than

Acomarit Geneva become part of V Ships Switzerland?

A. The number of the same Acomarit companies have been V Ships work and changed over in the same time.

Q. So, there are some other V Ship companies other than V Ships Switzerland?

A. Yes. There is a V Ships UK, Limited, in Glasgow, formerly Acomarit, UK, Limited.

Q. But there is no other company other than V Ships Switzerland that's the old Acomarit that's located in Geneva or Switzerland?

A. No, no, there is only one. One and the first one.

Q. Now, as far as financial records of the operations of the office of V Ships Switzerland, from, I assume that you were employed in your position that you have now as of 1997. Is that correct?

A. Just -- in 95 to 98 I was operations manager. And in 99, after that, I was area general manager.

Q. So, since 99 to today, you're general manager?

A. Yes.

Q. What was the difference between operational manager and general manager?

A. The operations manager is under the general manager, is running the operations department.

Q. Now, as far as the records of phone calls made

from the Geneva office or any place in Switzerland by the old Acomarit company or by V Ships Switzerland, from 97 until today, would those records have been kept in the manner in which you described, for three years, and then destroyed in the fourth year?

A. Yes. The system in Switzerland is invoices are coming once a month, and we pay. We pay the amounts, and we file it. Then, after three years, off it goes, incinerated.

Q. Now, as far as records are concerned then, with respect to any records for telephone service which Acomarit has for phone calls that were made to Acomarit or made by Acomarit or V Ships Switzerland people, I should say, those records for V Ships Switzerland, were they from a company by the name of Swiss Com?

A. Swiss Com is the state telephone company, and all our invoices for services come here.

Q. How often does V Ships Switzerland get its invoices?

A. Monthly.

Q. So, they come in monthly?

A. Monthly, yes.

Q. Are they in printed paper form?

A. They are printed paper form, but they just give the amount. They don't give all details, just the

amount, how much to pay.

Q. So, they don't give you the information about who was called?

A. They normally don't unless we specifically ask that we receive the details.

Q. Now, as far as keeping the records of the telephones, who has custody of those records in V Ships Switzerland today?

A. Who has custody, custody?

Q. Yeah. Do you have a records custodian? Do you know what I mean by that?

A. No, we don't have a record custodian. No, we don't have that.

Q. In your position as, let's see, managing director, did you say?

A. I said general manager.

Q. Okay. In your position as general manager, are you in a position to be able to request records, any records that you need from the company's records, from V Ships Switzerland, in your capacity? Are you able to request records and review them? Do you have the authority to do that?

A. Request records from whom?

Q. Any of the records of the company.

A. I have the right to look at any paper which we

are keeping in the office.

Q. Well, is there any kind of limitation that's placed on you in your position that you've described for me right now with V Ships Switzerland as far as being able to look at some records but not being able to look at others?

A. No. I have the right to look at any document in my office.

Q. So, you would have the right to look at any telephone records from Swiss Com that were still in existence that hadn't been destroyed, correct?

A. Yes, I would have this right.

Q. Okay. Now, in your capacity for V Ships Switzerland since 1999, have you been called on to review, request for reimbursement of expenses of any kind, for expenses with respect to any of the vessels that are managed?

A. Reimbursement for expenses?

Q. Yes.

A. Okay.Maybe we don't use the same terminology We will receive a fixed amount per month for every ship. And this money is spent to pay the vessel's invoices, the crew, et cetera.

Q. That's with specific ships, correct? You have an account for specific ships, and the ship owner pays a

certain amount each month for the expenses of the ship?

A. Exactly. We worked on a budget and receive money and pay the accounts to handle that.

Q. Are you familiar with a gentleman by the name of Tom Garrett?

A. Tom Garrett, yes, I know his name.

Q. Now, do you know if Tom Garrett ever traveled to New York, the state of New York between the period of time of 1997 and 1999?

A. No, I don't know if he came to New York during this perod. I don't know.

Q. Did Acomarit ever have any business with Mr. Garrett or the old Acomarit Geneva from 97 to 99 that would have had Tom Garrett traveling or anybody else traveling to New York to carry out any purpose?

A. These, Acomarit, repeat the beginning and end please?

Q. Okay. You have Mr. Garrett, and he's a resident in Pennsylvania. Okay?

A. Yes.

Q. What I'm asking is, did Mr. Garrett or anybody else, any kind of agent, employee, or contractor, ever go into the state of New York or ever do any business in the state of New York at the request of Acomarit Geneva from 1997 until the present date today?

A. No, I cannot recall that we sent a guy to New York during this period.

Q. What about anybody else?

A. I think you, I should tell you that there is ship maager. We manage a number of ships. And these ships are directed to every port in the world, including US ports. And there is not, you know, it is not in our, it is usual that the ships operate by charters and we, as managers, we have to attend ships once in a while to perform a technical service. And therefore, we, applying other words, you know, sometimes in the states, Japan, Canada. We attend ships. This is an international business.

Q. Okay. I understand that. And I'll try to get to the vessels in a moment. But what I'm asking is: Did anybody ever go into the state of New York at the request of V Ships Switzerland? Or did somebody in the state of New York at the request of V Ships Switzerland do anything with regard to managing vessels which is the company's business or any of its other business? And I'm talking about V Ships Switzerland.

A. No. We have no business in the state of New York at all.

Q. kay. Now Acomarit manages vessels, correct? I mean V Ships Switzerland manages vessels?

A. Yes, we are ship's managers of other ships.

Q. V Ships Switzerland does not own any vessels, correct?

A. We don't own any ship.

Q. Now, did any vessel call in the state of New York in any of its ports that was managed by V Ships Switzerland from 97 through 2003, today?

A. No.

Q. Your answer is no?

A. You said if any of the Geneva managed vessels have called the port of New York?

Q. Yes.

A. I can't recall. I don't think so.

Q. Who would know definitely whether that had happened?

A. Since we manage about 40 ships, I would have to check. I would have to check the information we have on the last ports.

Q. Do you have information available to you where you could check that?

A. I can ask each of the vessel operators, and they will know where the ship was in the last one year or two.

Q. Okay. I'm asking you to provide me that information. I know this is a deposition. But apparent -- I've been told that you may be the best

person to talk to about that. Is there anybody else that should be talked to other than you?

A. Well, I have an understanding of the activities of our office.

MR. NORK: Captain Bille would ask the individual operators that, as he said. And I will furnish you with that response.

Q. (By Mr. Izen) Okay. And so we're on the page, it's the generally managed vessels that may have called in the state of New York that were managed by V Ships Switzerland or its predecessor Acomarit Geneva from 97 to the present date, correct? I just wanted to clarify that.

A. Are you speaking to me or are you --

Q. No, I was speaking --

MR. NORK: Joe, I hear you. And we're talking about the time limit we've been dealing with, are we not?

MR. IZEN: Yeah, I mean 97 to 2003. I guess I'm a little over five years, but give me what you want with the date and --

MR. NORK: Okay. We will do it.

Q. (By Mr. Izen) Now, what about specially managed vessels? What's the difference between a specially managed vessel and a generally managed vessel, if there

is one?

A. Well, I don't see a difference.

Q. Okay. Also, I want any specially managed vessels who were, who called in the state of New York in his time period, if there were any, that were managed by V Ships Switzerland?

A. Did you say specially managed?

Q. Yes, sir. You used the term generally managed You said there was no vessels generally managed that you could recall that called on the port of New York. And perhaps I'm incorrect, but I suspected that there may be vessels that are generally managed and vessels that are specially managed. Is there any such distinction?

A. No, there is no distinction. There is managed vessels.

Q. Okay. Now, as far as your travel is concerned, your travel, have you ever been in the state of New York?

A. I've been in the state of New York only ten years ago. I have not been there since. On vacation.

Q. When you travel, do you have account that you charged long distance to Acomarit or V Ships Switzerland?

A. An account that we charge long distance, you meaning for what? For telephoning or what?

Q. Yes. That's the question. You see, the phone company has been identified in the interrogatories that

you signed. And I think you may remember them as Swiss Com, the phone company for Acomarit Service. And what I'm asking you is that, when you travel, do you have a long distance service that you're allowed to bill?

A. No. We don't have the service. We will either use a major local telephone or our own mobile phone.

Q. Okay. Your mobile phone, who is that maintained with?

A. My mobile phone is the company's mobile phone

Q. What's the company?

A. Acomarit, V Ships SA.

Q. Who was the service provider for the mobile phone?

A. I don't know the technical term, but it is a Swiss mobile phone. And I guess the monthly invoice was printed by the company. And after a few months or a year, it's destroyed.

Q. You said after a few months it's destroyed?

A. The record, we don't keep. If we don't destroy it, well, I think in every country so we have to destroy records after two or three years. Otherwise, we just have too much paper. It's too much paper.

Q. Okay. But as far as this cell phone company, do you know who the provider of the cell phone service is?

A. Yes. It's Swiss Com.

Q. It is Swiss Com?

A. Yeah.

Q. Are these cell phone records rendered in the same way as your fixed telephone line records by Swiss Com?

A. Exactly. But we don't get the details. We just get the amount.

Q. Do you know how long Swiss Com --

A. I have no clue.

Q. Excuse me?

A. I have no clue.

Q. Let me finish my question. Do you know how long Swiss Com keeps the records of the details?

A. I have no clue.

Q. Now, before testifying here today, were you asked to review some written interrogatories that were sent in this case by Captain Sheriff Saudi?

A. No, I think you walked away from the speaker. Repeat the question please.

Q. Do you recall having looked at and gone over written interrogatories, that's written questions, that were sent in this New York case by Captain Saudi to V Ships or Acomarit through Mr. Nork, Acomarit, V Ships's counsel?

A. No, I don't recall.

Q. Okay. I'm looking at supplemental responses, sorry, Supplemental Answers to Plaintiff's First Set of Written Interrogatories. Shows that Mr. Nork mailed them to me on March 14th, 2003.

It contains a verification from you. Comes now Captain Jacque Bille, and states, under penalties of perjury under the laws of the United States that he is an authorized representative of Acomarit Services Maritimes, SA, a defendant in this suit, that he has read the above Supplemental Answers to Plaintiff's First Set of Interrogatories, that the statements contained therein are true and correct and to the best of his knowledge and belief, says -- it's signed Jacque Bille, based on how I can make it out.

Do you recall this?

A. No. But you mention, if I signed the document, it means I read it, yes.

Q. Okay. Now, I also have Supplemental Responses to Plaintiff's First Set of Requests For Production mailed at the same time, which was responding to requests for various types of documents. Do you know if you read that?

A. Is it signed by me?

Q. It doesn't have your signature. It doesn't have to have anybody's signature but the attorney.

A. No, I can't recall. What I signed or is it, I cannot recall.

Q. This was March 14th, 2003, when it was mailed to us.

A. March 14.

Q. That's this year.

A. This is March 25.

Q. Yeah, that was two weeks ago or three weeks go. You don't remember going over --

A. I'm sorry. Is this something that -- I don't recall having seen any document of this case in the last two weeks. I don't recall.

Q. Okay.

MR. NORK: Joe, the document requests, I worked with a different person in the office. I don't think Captain Bille would have been involved in the request for document responses.

MR. IZEN: Okay. I'll take that and -- if he can't remember it, we'll just go on. And I'll take your statement into account also, Mr. Nork.

Q. (By Mr. Izen) Getting back to the answers in this case that he might have been involved in, Mr. Bille, you might have been involved in, do you remember reviewing and signing Acomarit Services Maritimes, SA's, Answers to Plaintiff's First Set of Interrogatories in

this New York case around January 15th, 2003?

A. Is it signed by me?

Q. I have a statement that appears to be signed by you.

A. Well, if it's signed by me, then it's read by me.

Q. The paper that I have, it has a verification. And it looks like you signed it up where it said defendants over the word verification. But it says, come now, comes now Captain Jacque Bille, and states under penalty of perjury under the laws of the United States of America that he is an authorized representative of Acomarit Services Maritimes, SA, the defendant in this suit, and he has read the above answers to Plaintiff's First Set of Interrogatories, that the statements contained therein are true and correct to the best of his knowledge and belief.

A. If it's signed by me, I have read them.

Q. Okay. When you made the statement in this document that the statements were true and correct to the best of your knowledge and belief, what did you review and what were you basing your knowledge and belief on?

A. If I read the document and if I agreed with the text, then it was the best of my knowledge and belief.

Q. I know. But you said you had the best of your

knowledge. What was the best of your knowledge based on? What you had experienced with the company while you were there, what you were familiar with and what you saw?

A. I'm not sure I fully understand you.

Q. Well, we obtain knowledge in various ways, correct? We see things. We hear things. We look at company records. I want to know, when you answered these interrogatories, what the basis of your knowledge was. How did you know these were correct to the best of your knowledge and belief?

A. I can't answer this question. If I signed a document to the best of my knowledge, it is because I think that this is correct.

Q. Okay. Then, let me ask another question. What did you review, if anything, before answering the interrogatories?

A. I can't quite follow you on this. I think you have to clarify, maybe ask a different question. I don't quite follow you.

Q. Did you look at any company records before you answered these questions?

A. What company records?

Q. I'm asking you. I'm asking you: Did you look at any? Do you understand the word any?

A. Yes, I understand the word any.

Q. That means if you looked at any records. I'm asking you if you looked at any records.

A. No, I didn't look at any records. I'm aware of this case. And when I read something about the case, I, I say, if I sign it, it's to the best of my knowledge.

Q. Okay. So, when you answered the interrogatories in January 2003, you didn't look at any records, correct?

A. I did not look at any records.

Q. And when you answered the Supplemental Answers to Interrogatories on, let's see, March 14, 2003, or thereabouts, you didn't look at any records, correct?

MR. NORK: And I've got to object, Joe, because I don't understand where this is going. But here is the objection. He doesn't have the benefit of the document that you're referring to to respond and the answers and supplemental answers. He does not have them before him. He probably didn't look at that at the time he signed them.

I guess what I'm getting at is, if he --

I'd hate for him to later on be found or for you to have an argument later on that somehow he didn't do the right thing.

MR. IZEN: Excuse me. Your objection is totally unfounded under the Federal rules, and I have to object. I think you're instructing the witness. I just

asked a simple question, and I think it's within his purview. I'll note your objection. If you're instructing him not to answer, I'll move on to something else.

MR. NORK: I'm not instructing him not to answer. My objection is vague, ambiguous, multifarious, misleading.

MR. IZEN: The whole laundry list and the usual suspects. I understand. I've dealt with this before, and I'll move on to the next thing. My question was pending. I'm satisfied with what answer that he said, and I'll go on with the next thing. You're objecting. You're saying he's not going to answer the last question I asked, and I'll just move on.

MR. NORK: No, I'm objecting because it's vague and ambiguous. And if you ask him, for example, what the interrogatories -- I'm not going to make a speaking objection. Ask the question again. I'm not instructing him not to answer. I'm objecting that it's vague and ambiguous.

MR. IZEN: Okay. I'm objecting to your whole procedure and way you're handling this, Mr. Nork. I think it violates the rules. I'll go on. And I will repeat the question however.

Q. (By Mr. Izen) My last question was, Mr. Bille,

so, you didn't look at any other records. When you signed the interrogatories, you verified them on March 14th, 2003, or thereabouts, the Supplemental Answers to Interrogatories for Acomarit Services?

A. I said I don't recall seeing any document. I'm not sure of March 14th, 2003. But in general, yes, I recall signing a document, but not -- I didn't read such document and match what was printed.

Q. Let's see. As far as the answers to the interrogatories themselves, I'll read any interrogatory that you want me to. I assumed y'all would have your files there in front of you. But these were interrogatories answered for Acomarit and V Ships Switzerland. The latest supplement was March 14th, 2003. Now, interrogatory number one asked: List and describe in complete detail, including the name, telephone number, and present address of the initiator, and recipient of each call made to the following entities: Marine Atlantic, Limited, Acomarit Maritimes Services, SA, Monte Cristo Ship Holding, Limited, from the state of New York from February 1st, 94, to the present date, stating with respect to each call the purpose of said call, duration, name, address, and present telephone number of the service provider and describing the conversation.

The answer was, without waiving the foregoing objections, Acomarit Services Maritimes, SA, possesses no information. Acomarit's telephone service provider during the time period March 97 through March 2002 was Swiss Com.

Now, Mr. Bille or Captain Bille, did you ever request detailed information from Swiss Com concerning this answer to interrogatory on behalf of V Ships Switzerland?

A. I did not request specific records. We just received the invoice, we paid them, we filed them. And then we destroyed them.

Q. Okay. So, you never went back to Swiss Com in an effort to answer this interrogatory and request specific information, correct?

A. Correct, yes.

Q. Now, as far as the supplemental responses to the requests for production, Mr. Nork has indicated that he does not believe that he dealt with you in attempting to try to get assistance to answer this. Do you know who it was in the company who would have, would be the person that provided this information?

A. Repeat the, I didn't quite understand your question. Repeat it. Sorry.

Q. Okay. We had been discussing previously a

response to plaintiff's request to production and supplemental response. I asked you if you reviewed any documents with respect to that. Mr. Nork told me before I think you answered or in conjunction with your answer that he believed he dealt with somebody else in the company.

A. Yes.

Q. Other than you. So my question is: Who in this company would know how this was answered, what records were consulted, and who actually knows about the documents that V Ships has that would be responsive to this request?

A. Yes. We have among our staff one person who is, his name is Mark C. Thompson.

Q. Could you spell it please?

A. Mark, M-a-r-k, C like Charlie, and Thompson like Thompson, T-h-o-m-p-s-o-n.

Q. Okay. Were there any records that are ever kept specially and not destroyed for any reason in light of this general instruction policy that you've described?

A. No, we don't -- we don't -- we don't keep documents longer than we have to, just to avoid an accumulation of paper.

Q. I understand. But are there some records that you have to keep longer than three years ?

A. There may be some records that we keep longer than three years, but nobody -- after three years, it's gone.

Q. If somebody like Thomas Garrett submitted requests to be reimbursed from V Ships Switzerland from 97 to 2003, are those reimbursement records kept three years?

A. I don't know. It's too old. If there is any money due, it will come in the next three months. It will not come up for three years.

Q. What I'm asking is: If Thomas Garrett or somebody sent receipts requesting reimbursement to Acomarit, original receipts, copy receipts, whatever, would those be kept three years? Or would they be destroyed?

A. They would be, anything after three years would be destroyed. At least that's the policy. Otherwise it's destroyed.

Q. But those records would be kept three years before they are destroyed, correct?

A. They are kept as long as we require them; and then, they are destroyed.

Q. Again, I need an answer to my question if I can get it. Would those kind of reimbursement records like receipts or whatever involving the vessels, would they be

destroyed before the three-year period expired?

A. Yes, they would be received in the office. If money is due, they would be checked; and the amount would be paid by the accounting department. It would be filed in the accounts for a period; and then, it would be destroyed after three years.

Q. After three years though. They would be kept for three years; and then, they would be destroyed after three years?

A. That's the general rule.

Q. Is there any time that there is exceptions made to that rule about destruction, where the records are destroyed earlier?

A. We have exception for the national flagships that we manage. We have the national flag; and if they are national flagships, we have a requirement to maintain them for five years. So, that would be the exception.

Q. Would that be US flagships?

A. No, it is not American flagships. Swiss flagships.

Q. Now, I'm going to ask you about some persons. Do you know Baron T. Jones?

A. Is that the name?

Q. Yes.

A. Say again the name.

Q. Baron T. Jones.

A. No, no.

Q. Do you know Michael A. Layman?

A. No.

Q. Do you know Jennifer Maloney?

A. Never heard of her.

Q. Do you know Ella W. Dodson?

A. Never heard.

Q. Do you know Moore Stevens?

A. You mean Moore Stevens the accounting firm, the auditing firm?

Q. Yes.

A. The auditing firm, I know the name, yes. I know the name, but --

Q. Have you had any business connection with them that you can describe while you've been at V Ships Switzerland or Acomarit?

A. I may have met this name somewhere, for clients may have their accounts audited by Moore Stevens. But to my knowledge, Acomarit does not have any dealing with Moore Stevens.

Q. So, as far as you know, Moore Stevens did not do any business for Acomarit or any of its functions or help it with its accounting or V Ships Switzerland from 97 through the present date?

A. No, Moore Stevens is not involved with Acomarit Services or V Ships at all.

Q. Glen Roberts II?

A. I never heard of him.

Q. I didn't get your answer. I'm sorry.

A. I never heard his name, never heard.

Q. Barry Quinn.

A. No, never heard.

Q. Charles Williams.

A. Never heard.

Q. Charles A. Smith.

A. Never heard.

Q. Alpha Investment, Incorporated.

A. Alpha Investment, Incorporated, I don't know.

Q. Alpha Export Services, Incorporated.

A. I don't know.

Q. Marine Atlantic, Limited.

A. Yeah, this is the listed owners of the MARINE ATLANTIC.

Q. Who did you deal with, if anyone, from 97 through 2003, in Marine Atlantic, Limited?

A. As far as Marine Atlantic, Limited, they were existing owner of MARINE ATLANTIC and is represented by Scope Management, SA, led by a man named as Venka Atil. So this, this ship is long -- we are dealing with this

vessel solely with Scope Management, Mr. Atil.

Q. Now, we've got Monte Cristo Ship Holdings, Limited. Have you ever dealt with that entity?

A. I heard the name. I heard the name.

Q. And who have you dealt with, if anybody, I Monte Cristo Ship Holding, Limited?

A. I know the name Monte Cristo, and I know the name of Hamshaw which I think is linked with Monte Cristo. But I'm not sure. My level, I'm dealing with only Scope Management and Mr. Atil; and I don't have other knowledge. And I don't need to. I only deal with Mr. Atil.

Q. Have you ever dealt with Robert Hamshaw?

A. I know his name.

Q. Have you ever discussed or dealt in any way with business transactions with Robert Hamshaw involving Marine Atlantic?

A. No. I know his name. I know the name of Monte Cristo. But I'm dealing as a general manager of V Ships and manager of Marine Atlantic. I'm dealing with Scope Management, SA, under Mr. Atil. They are our direct contact and owners.

Q. That's Scope Management, S-c-o-p-e, correct?

A. S-c-o-p-e, Management, SA. SA means society name, something like that.

Q. Like a corporation?

A. Yes.

Q. Does Mr. Atil, Sorendar Atil, does he deal with matters for Marine Atlantic involving questions concerning the charter or technical management of the vessel MARINE ATLANTIC?

A. As far as the owner's representative, so he's -- we are reporting to him. We are asking for the necessary forms from him. And he's the direct link on his vessel.

Q. Who maintains the record that would show where the Acomarit or V Ships Switzerland managed vessels have called in the United States such as in ports like anywhere on the United States seaboard including New York? Who would have those records if they exist?

A. I believe you mention an entity.

Q. 2003?

A. Records for like a position list. We are always aware of operation of a ship on a daily basis. And we follow the ships and that. But we are not interested to know where was the ship ten years ago. So, after three years, all these things are destroyed.

Q. So, V Ships or Acomarit has those records; but they're destroyed after three years.

A. As a general rule, yes.

Q. Okay. Now, getting back to people, have you

ever met Greg Doyle?

A. Yes, I've met Greg Doyle.

Q. Why did you meet Greg Doyle? What business, if any, was transacted when you met him?

A. Greg Doyle is like the chartering, the commercial manager of the MARINE ATLANTIC. It means he's looking for the cables of the ships. I met Greg Doyle, he went to visit the ship in Kuwait; and I went with Greg Doyle to MARINE ATLANTIC or in the Empress. So, I've met him on board the ship. I've met him once or twice, yeah.

Q. Is that all you can remember in your dealings with Greg Doyle, that you met him on board a vessel in Kuwait, the MARINE ATLANTIC?

A. Greg Doyle is a commercial manager. So, there are exchanges between Greg Doyle and us, the technical manager. He wants to know if the ship is ready, what is the crew, how much did we consume. Yes, we talked to him.

Q. Did you talk to Greg Doyle on the telephone

A. It can be, yes, I can call him, yes.

Q. When you call Greg Doyle, he's located in Massachusetts or New York?

A. No, no. Greg Doyle is mainly in Massachusetts , Massachusetts and Florida. So, he's moving around in the States, visiting or looking for covers for ships. And I

can call him any time I need. But usually, it's him calling me, not me calling him.

Q. Okay. And you don't know the whereabouts of Mr. Doyle when he calls you because he has a cell phone, correct?

A. I don't need to know if he's in Massachusetts or Florida. I don't need to know. He calls me, and I answer his questions.

Q. Were you aware as to Greg Doyle being in New York in meeting with anybody that had to do with MARINE ATLANTIC from 97 through 2003?

A. No, I'm not aware.

Q.Who in the company,who in V Ships Switzerland would be aware of any arbitration cases that had Involved claims based on the management of the vessels or any kind of financial claims that involve V Ships Switzerland or Acomarit from 97 through the present date?

A. I'm not aware of any arbitration claim against Acomarit or V Ships, SA. I'm not aware of any such arbitration.

Q. Are you saying there were none, or are you saying you're just unaware of that?

A. No, best of my knowledge, I, I don't think there was any arbitration or against Acomarit or V Ships at all.

Q. What is your knowledge based on? Have you reviewed all the records of the company before testifying here today?

A. No, the knowledge is I've got 25 years in this company; so, I know there is no arbitration.

Q. Okay. With respect to lawsuits, any claims filed in the United States involving V Ships Switzerland or Acomarit from 97 to the present date? Were there any such litigations that were filed, other than this case with Captain Saudi?

MR. NORK: Joe, do you mean where Acomarit was accused and it was a defendant?

MR. IZEN: Yes.

MR. NORK: A lawsuit filed in the United States?

MR. IZEN: Yes.

MR. NORK: Do you know?

THE WITNESS: I'm aware of Marine Atlantic case. That's why we're sitting here talking to each other.

Q. (By Mr. Izen) There is this one. I was just wondering if there were any others.

A. No, there is not others.

Q. I understand there were a couple of cases filed by Captain Saudi. There was one in Houston. There as

one in Maryland. And there was one in Pennsylvania and --

A. Yes. I think it is the same case. Marine Atlantic case.

Q. Yes, sir. Other than any suit involving Captain Saudi, you don't know of any, correct?

A. No. I think there is not any. I'm quite certain there is not any other case.

(Off the record.)

MR. NORK: Joe, sounds like you are pretty close to the end.

MR. IZEN: Yeah, I'm getting close. Thank God.

Q. (By Mr. Izen) Do the employees of V Ships Switzerland such as yourself travel abroad, outside of Switzerland?

A. Yes.

Q. You already described a trip to Kuwait?

A. Exactly. We have other ships. This is part of our management business. As a rule, we visit each ship three times a year.

Q. Does the company maintain as part of its operational records, Acomarit or V Ships Switzerland, from 97 through today, diaries, manifests, logs, or schedules, whether electronic, computer generated, or

written, showing the travel and the expenses of its employees or agents?

A. Yes. But there again, we keep records as long as they are useful to us. And when we close the account, then it's always -- when we are able to close the account, then the records are not important to us anymore. So, we keep that for a while; and then, they go. I mean we cannot accumulate tons of papers. We try to streamline this. After three years, as a rule, and sometimes even earlier, we just destroy them. It's done by incineration in general.

Q. Now, in interrogatory number three of the original interrogatories that were answered back in September 2003 in this case, you signed the verification on these interrogatories. The interrogatory asks, describe in complete detail the contents of all diaries, manifests, logs, and schedules, of any kind, whether written or electronic or computer generated, reflecting the travel of Robert Hamshaw or Greg Doyle, agent 1, 2, or 3, and any other agent, employee, attorney, or representative, of any of the following entities, Marine Atlantic, Limited, Acomarit Maritimes, SA, Monte Cristo Ship Holding, Limited, who is residented or domiciled in the state of New York from February 1st, 94, to the present date.

There was an answer. And you stated in the final sentence, Defendant Acomarit is aware of no travel by any New York resident or domiciliary on behalf of Acomarit.

Now, what records if any did you look at in making that answer?

A. No, well, we didn't look at any records. We have no record of Tom Garrett, any such records in our office. No. This is too old.

Q. Okay. You said it was destroyed by incineration?

A. I think the records were destroyed by the company after, to the best of my knowledge, it's all done by incineration.

Q. Okay. Who in the company V Ships Switzerland or Acomarit has the most knowledge about the phone traffic and the phone bills?

A. About the phone traffic and the phone bills?

Q. Yeah. What I'm asking is who calls who and how much it costs?

A. Of course, I'm keeping a record on communication costs. Our business is mostly communication. So, our use of telephone is high. And therefore, we keep, I keep an eye on costs; and I have an assistant who is checking in by invoice and just more interested in the monthly

cost of our communications. So, we check the bill when it's considered abnormal. And after we don't need it anymore, we destroy them.

Q. So, you try to keep the costs down?

A. We compile our costs. We compile our costs because we have budgets. We're working on a budget, and we can spend so much per ship or per day. And the office should not be more than a thousand francs a month. And we see if we're on our budget.

Q. Is that francs or dollars?

A. In our company we speak with francs.

Q. 5,000?

A. The invoices are in Swiss francs.

Q. Who is the name of the guy who helps you with the telephone charges to keep up with them?

A. His name is, function of technical assistant. And his name is Eric, E-r-i-c. And his family name is V-u-i-l-l-a.

Q. Now, was he always the guy who did it Stretching back to 97; or has his office changed over the period of time since 97?

A. We changed; but we are still with the same people, the same staff.

Q. Can you give me the name of anybody else that served that function from 97 through the present day?

A. The name of the gentleman, I gave you the name before, the same man.

Q. Would these gentlemen have had the access to the phone records to the full extent that they showed reimbursement from hotels for foreign long distance calls as well as anything from Swiss Com?

A. No. This gentleman is not, the travel expense are different over the years. Superintendent of ship in Japan, he comes back. He will submit his traveling expense. We check. We look at the vouchers. If it's okay, he gets his money back. We account for it. We charge the owner. We collect our money and do the next one if it is good, if it is in align.

Q. When were you aware that Acomarit and V Ships Switzerland was sued by Captain Saudi?

A. Well, I remember the date of May 13th, 1999. As the operations manager, I was immediately aware of this accident, incident. And, of course, we had to review this. Of course, I am fully aware of this from the very beginning, of the very date. We did -- a few minutes after this incident, I was aware of it.

Q. Did you do anything different with respect to records of the company or anything else in light of that May 15th or May 17th, 1999, injury of Captain Saudi?

A. No, nothing at all because we, there is no need.

We had talked of transfer. My business is transparent; so, I have nothing to hide.

Q. When were you aware that Captain Saudi had filed a lawsuit?

A. I, it's -- it is so long ago that I don't remember the ate. But I became aware when -- I am not sure of the date, but I was aware.

Q. Had you ever met Captain Saudi before May 17, 1999?

A. No, I have never met Captain Saudi. In fact, when I saw his name, first I thought it was Omar Sharif. I was surprised to see an American with the same Saudi Sheriff, I tell you.

Q. Have you ever met Captain Saudi?

A. Never met him.

Q. Okay. Have you signed other affidavits for the company V Ships Switzerland other than the ones involved in this case?

A. If I signed other affidavits? Outside this case?

Q. Yes, sir.

A. I suppose I have, yes.

Q. You have? Can you recall the instances and describe them for me where you signed affidavits for Acomarit or V Ships Switzerland on behalf of them as part

of their business and it was not involved with any of Captain Saudi's cases.

A. I don't quite remember. I think we should say on this case and not on other cases.

Q. Do you know whether any of those affidavits remain anywhere where you would have access to copies?

A. No, no, I'm not aware of it.

Q. When you made the affidavits, what kind of affidavits were they? Did they have to do with the company business?

A. I don't remember. I don't remember.

Q. If someone were to ask you to produce at least these signed sworn statements on the affidavits, a copy of it that you had signed previously, would you be able to do that? Would those records still exist?

A. I can't answer your question. A lawyer is standing here on cases. I don't have it. I sign affidavits in our office.

Q. Did you have any documentation you maintained from 97 to 2003 concerning the ownership of the vessel MARINE ATLANTIC?

A. You say the ownership. Well, the ownership has not changed since we became the managers. It's always been Atlantic benefit; and my senior contact is Mr. Atil, Scope Management.

Q. Okay. So far, nothing has changed in your records since 97?

A. Not changed.

MR. IZEN: I believe that's it, Mr. Nork.

MR. NORK: Thanks a lot, Joe. Would you mind if I asked a couple of questions?

MR. IZEN: Well, you're entitled to. You've got the right to since I asked questions.

MR. NORK: Okay. Here is what we are going to do. I'm going to hang up and put it on my nickel and call you back in five minutes.

MR. IZEN: Okay.

(Off the record.)

MR. NORK: Joe, I don't have any questions.

MR. IZEN: Have a safe trip back.

(Proceedings adjourned at 10:09 a.m.)

CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON

I, JACQUE LOUIS BILLE, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

_____

JACQUE LOUIS BILLE

THE STATE OF)

COUNTY OF)

Before me,_____, on this day personally appeared JACQUE LOUIS BILLE, known to me (or proved to me under oath or through_____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this ____day of _____,_____.

_____

NOTARY PUBLIC IN AND FOR
THE STATE OF _____

THE STATE OF TEXAS :

REPORTER'S CERTIFICATION
DEPOSITION OF JACQUE LOUIS BILLE
March 27th, 2003

I, Margaret A. "Peggy" Taylor, Certified Shorthand Reporter in and for the state of Texas, hereby certify that this deposition transcript is a true record of the testimony given by the witness named herein.

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to the Federal Rules of Civil Procedure will be certified to after they have occurred.

Certified to by me this 4th day of April, 2003.

Margaret A. "Peggy" Taylor
Texas CSR 2223
Expiration Date: 12/31/04
733 East 6-1/2 Street
Houston, Texas 77007
713-868-1901

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

CAPTAIN SHERIFF SAUDI, Plaintiff,	:	
vs.	:	NO. 02-CV-2495 (JG)(LB)
MARINE ATLANTIC LTD., MONTE CRISTO SHIP HOLDINGS, LTD., ACOMARIT MARITIMES SERVICES, SA,	:	
Defendants.	:	

AFFIDAVIT

I, Margaret A. "Peggy" Taylor, do hereby certify that I was the officer before whom the oral deposition of JACQUE LOUIS BILLE, was taken on 27th day of March, 2003.

I do hereby further certify that on _____, 2003, ___The original signature page of the deposition was submitted to _____.

_____The original deposition was submitted to for examination and signature.

_____Notification was given to_____that the original deposition given in the above cause was complete and ready for examination and signature at the offices of McCracken & Norton Court Reporters, within thirty days of said date.

_____More than thirty days have elapsed since the above submission. The original deposition, together with all exhibits, is being forwarded to _____on_____.

_____More than thirty days have elapsed since the above

submission of the original deposition and it has not been returned to the offices of McCracken & Norton Court Reporters.

_____The original deposition has been signed or the original signature page was signed and notarized. The attached page(s) contains changes, if any, made by the witness and the reasons therefor. The original deposition together with all exhibits is being forwarded to _____on _____ .

That a copy of this Affidavit was served on all parties shown herein, pursuant to information made a part of the record at the time said testimony was taken.

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SUBSCRIBED AND SWORN TO on this,

the_____day of _____ , 2003.

_____

Margaret A. "Peggy" Taylor, CSR
Certified Shorthand Reporter
in and for the State of Texas

Certification No.: 2223
Date of Expiration: 12/31/04
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